TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 247

EDWARD T. BLAIR, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 31, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

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vs.

COMMISSIONER OF INTERNAL REVENUE

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[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 42313

EDWARD T. BLAIR, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Taxpayer: J. F. Dammann, Jr., Esq., C. F. Selfridge, Esq.

For Comm'r: John M. Morawski, Esq., B. A. Low, Esq.

DOCKET ENTRIES

1929.

Jan. 14. Petition received and filed. Taxpayer notified. (Fee paid.)

Jan. 15. Copy of petition served on General Counsel.

Feb. 15. Answer filed by General Counsel.

Mar. 9. Copy of answer served on taxpayer. General Calendar.

1931.

Oct. 10. Hearing set Dec. 14, 1931.

Oct. 21. Motion for 90 days' continuance filed by taxpayer. 10/23/31 granted to March 7, 1932.

1932.

Mar. 7. Hearing had before Mr. Murdock on respondent's motion to continue pending decision of docket 24684 in Circuit Court of Appeals. Granted and continued to May 9, 1932.

Mar. 7. Order that proceedings be continued to Day Calendar of May 9, 1932 entered.

May 6. Motion for continuance to Fall Calendar 1932 filed by General Counsel. 5/7/32 granted.

Sep. 12. Hearing set Oct. 25, 1932.

Oct. 7. Motion to place on the Reserve Calendar filed by General Counsel. 10/10/32 granted to Reserve A.

DOCKET ENTRIES—Continued

1933.

Mar. 29. Motion to restore to the Board's Day Calendar filed by General Counsel. 4/3/33 granted.
Apr. 5. Hearing set May 8, 1933.

[fol. 2]

Apr. 7. Motion for circuit hearing at Chicago filed by taxpayer. 4/10/33 granted.
Jul. 24. Hearing set week of August 28, 1933 at Chicago, Illinois.
Sep. 5. Hearing had before Mr. McMahon, Div. 16 on merits. On motion for continuance, taken C. A. V. Consolidated with docket 63741. Stipulation of facts filed. Petitioner's brief on motion to continue due 10/1/33.
Sep. 18. Transcript of hearing of 9/5/33 filed.
Oct. 2. Brief filed by taxpayer.

1934.

Apr. 18. Order that proceedings be restored to Day Calendar of May 2, 1934 for hearing pursuant to stipulation of facts filed Sept. 5, 1933 entered.
May 2. Hearing had before S. J. McMahon, Div. 16. Submitted on merits. No briefs. Further hearing.
May 14. Transcript of hearing of May 2, 1934 filed.

1935.

Jan. 31. Findings of fact and opinion rendered, S. J. McMahon, Div. 16. Decision will be entered under Rule 50.
Mar. 1. Notice of settlement filed by General Counsel.
Mar. 4. Hearing set March 20, 1935 under Rule 50.
March 19. Consent to settlement filed by taxpayer.
Mar. 22. Decision entered, S. J. McMahon, Div. 16.
Jun. 12. Petition for review by U. S. Circuit Court of Appeals (7) with assignments of error filed by General Counsel.
Jun. 27. Proof of service filed by General Counsel.
Aug. 1. Motion for extension to Sept. 12, 1935 to prepare and transmit record filed by General Counsel.

DOCKET ENTRIES—Continued

1935.

Aug. 1. Order enlarging time to Sept. 12, 1935 to prepare and transmit record entered.

Sep. 9. Agreed statement of evidence lodged by General Counsel.

Sep. 9. Præcipe with proof of service thereon filed by General Counsel.

Sep. 12. Order that time for preparation of evidence and delivery of record be extended to Nov. 1, 1935 entered.

Oct. 2. Order that clerk of the Board be directed to omit any statement of evidence in the record to be transmitted by him to the U. S. Circuit Court of Appeals for the 7th Circuit, entered. (See memorandum attached.)

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 42313) * * *

PETITION—Filed January 14, 1929

The above named Petition hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency IT:AR:B-12 PL-60D dated November 16, 1928, and as a basis of his petition alleges as follows:

(1) Petitioner is an individual with residence at 1516 Lake Shore Drive, Chicago, Illinois.

(2) The Notice of Deficiency, a copy of which is attached and marked Exhibit "A," was mailed to the Petitioner on November 16, 1928.

(3) The taxes in controversy are income taxes for the calendar years 1924, 1925 and 1926. The amounts in controversy are

1924	$7,642.52
1925	10,399.94
1926	12,876.36

(4) The determination of the tax set forth in said Notice of Deficiency is based on the following errors:

(a) The Commissioner of Internal Revenue erred in including as income of this Petitioner

$30,000.00 in 1924
65,356.89 in 1925
58,434.96 in 1926

which was not income properly chargeable to the Petitioner, and which in fact was never received by him or credited to him, but was in fact income of the trust estate created under the Will of Wm. Blair, the father of this Petitioner; which said income was in fact properly distributed by the trustees of the estate of Wm. Blair to Edith Blair, Edward Seymour Blair, Lucy Blair Linn and Wm. McCormick Blair.

(b) The Commissioner of Internal Revenue erred in increasing this Petitioner's income in the amount of $16,856.89, as a result of the disallowance of the deductions by the trustees of the estate of Edward T. Blair for commissions and legal expenses paid in connection with two leases on real estate which constituted a part of the assets of said estate.

[fol. 4] (5) The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

(a) Wm. Blair, the father of this Petitioner, and a resident of the City of Chicago, County of Cook and State of Illinois, died on or about the 10th day of May, 1899, leaving a Last Will and Testament wherein he provided among other matters for the creation of a trust estate in the hands of the trustees named therein, Chauncey J. Blair and Edward Tyler Blair. By the terms of this trust the wife of decedent was to receive one-half of the net income of the said trust estate and the son of the decedent, the Petitioner herein, was to receive the other one-half, until the death of said wife and after that time the Petitioner herein was to receive a whole of the net income of the said trust estate for and during the full term of his natural life.

The wife of the decedent, Wm. Blair, died on or about the 13th day of March, 1923 and thereafter the said Petitioner, Edward T. Blair, under the terms of said Will became entitled to all of the income from said trust estate.

Thereafter on, to wit, the 2nd day of April, 1923, the said Petitioner, Edward T. Blair, made, executed and delivered three certain Indentures as follows:

(a) An Indenture wherein Edward T. Blair was the party of the first part, and Lucy Blair Linn was the party of the second part, and whereby the said Edward T. Blair did sell, assign, transfer and set over unto the said Lucy Blair Linn $6000.00 for the remainder of the current calendar year, and $9000.00 for each calendar year thereafter in the net income which the said Edward T. Blair was then, or might thereafter, be entitled to receive during his life from the Trustees under the will of William Blair, deceased.

(b) An Indenture similar in all particulars, wherein Edward T. Blair was the party of the first part, and Edith Blair was the party of the second part, the amount of said assignment being $9000.00 in each calendar year out of the net income from the trust estate of William Blair, deceased.

(c) An Indenture similar in every particular, wherein Edward T. Blair was the party of the first part, and Edward Seymour Blair was the party of the second part, the amount of said assignment being $9000.00 in each calendar year out of the net income from the said trust estate of William Blair, deceased.

Thereafter this Petitioner made, executed and delivered other indentures similar in all particulars, assigning to the [fol. 5] following persons the following sums in each calendar year from the date thereof out of the net income of said trust estate:

September 1, 1924	Edith Blair	$3000.00
September 1, 1924	Lucy Blair Linn	3000.00
September 1, 1924	Edward Seymour Blair	3000.00
January 2, 1925	Edward Seymour Blair	6000.00
January 2, 1925	Wm. McCormick Blair	4000.00
May 1, 1925	Edith Blair	3000.00
December 1, 1925	Lucy Blair Linn	6000.00
January 2, 1926	Wm. McCormick Blair	2000.00

The full force and effect of said Indentures was recognized as valid by the said trustees and the trustees paid to the parties named in the said Indentures during the years 1924, 1925 and 1926 the following amounts, which amounts were reported by them respectively in their income tax re-

turns for said years and the taxes assessed thereon paid by them:

	1924	1925	1926
Edith Blair	$10,000.00	$14,000.00	$15,000.00
Edward Seymour Blair	10,000.00	18,000.00	18,000.00
Lucy Blair Linn	10,000.00	12,500.00	18,000.00
Wm. McCormick Blair		4,000.00	6,000.00

The examining officer in Chicago and the Commissioner of Internal Revenue have added the above sums to the income actually received by this Petitioner from said trust estate during said years. The Commissioner's letter of November 16, 1928 states

"You are advised that this office holds that the assessments made by you to your children does not change the taxable status of the proceeds received by you from the estate."

This Petitioner contends that this ruling is incorrect with respect to the assessments here in question. This Petitioner particularly points out that this ruling is inaccurate in its reference to proceeds of the trust "received" by Petitioner from the estate. As hereinbefore stated, the amounts assigned to the children of this Petitioner were paid to them by the trustees and were never received by this Petitioner. The children of this Petitioner included these amounts in their returns for said years and paid the tax assessed on them.

In 1925 the trustees of the estate of William Blair executed a twenty-five year lease on real estate situated at 180 W. Randolph Street, Chicago, Illinois, and a twenty year lease on real estate located at 729 So. Wabash Avenue, Chicago, Illinois. Incident to the execution of the first of these [fol. 6] leases the trustees paid $11,640.00 as a commission to a real estate broker and $200.00 for legal services. Incident to the execution of the second lease the trustees paid $5,479.46 to a real estate broker and $300.00 for legal services. The total of these amounts, $17,619.46, was paid by the trustees out of the current funds of the estate in the year 1925 and charged as expense. This estate has considerable holdings in real estate in the City of Chicago and frequently makes leases and pays commissions and legal fees in the operation of these properties. The trustees distributed as the net income of this estate the amount remaining in their hands after the deductions of these expenses, together with other expenses of the estate.

The examining officer in Chicago and the Commissioner of Internal Revenue increased the income of this Petitioner by the amount of $17,619.46 less $762.57, which they hold is the proper part of that expense to be attributed to the year 1925. This adjustment is erroneous for the reason that this additional amount was not distributable to the Petitioner in 1925.

The Commissioner's letter of November 16, 1928 adds $58,434.96 to the income reported by this Petitioner as received from the estate of William Blair. This increase is presumably the result of the ruling that the income paid to his children was taxable against him. However, the amount of the income paid to the children was only $57000.00. Because the Commissioner has not stated his grounds for this additional increase this Petitioner is unable to state specifically any facts in regard thereto.

Wherefore, the Petitioner prays that this Board may hear the proceeding and re-determine his tax liability for the years 1924, 1925 and 1926; that this Board may hold that the said items of income, above referred to, were not income of this Petitioner and that the deficiency in tax for said years proposed by the Commissioner be overruled and that judgment of no deficiency be entered herein.

J. F. Dammann, Jr., Attorney for the Petitioner, 140 So. Dearborn Street, Chicago, Illinois. Wilson, McIlvaine, Hale & Templeton, of Counsel, 140 So. Dearborn Street, Chicago, Illinois.

[fol. 7] *Duly sworn to by Edward T. Blair. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

Treasury Department, Washington

November 16, 1928.

Office of Commissioner of Internal Revenue

IT:AR:B-12
PL-60D

Mr. Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois.

SIR:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax

liability for the years 1924, 1925 and 1926 discloses a deficiency of $30,918.82, as shown in the attached statement.

The sections of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and dupli-
[fol. 8] cate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully, D. H. Blair, Commissioner, by Wm. T. Sherwood, Acting Deputy Commissioner.

Enclosures: Statement. Form 866. Form 882. Form 7928.

Statement

IT:AR:B-12
PL-60D

November 16, 1928.

In re Mr. Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois

Year	Deficiency in Tax
1924	$7,642.52
1925	10,399.94
1926	12,876.36
Total	$30,918.82

Reference is made to the report of the Internal Revenue Agent in Charge at Chicago, Illinois and to your protest submitted under date of September 28, 1928.

The only issue raised was whether the income from a life interest in the Estate of William Blair, which you assigned to your three children, is taxable income to you.

Since the same issue is now pending before the United States Board of Tax Appeals in connection with the determination of your tax liability for the year 1923, the action set forth in office letter dated August 30, 1928 is sustained.

[fol. 9] 1924

Net income reported on return		$44,262.15
Add:		
Understatement of income from the Estate of William Blair:		
Other income	$22,851.00	
Dividends	7,149.00	30,000.00
Adjusted net income		$74,262.15
Less:		
Exemption	$1,000.00	
Dividends	16,680.00	17,680.00
Income subject to normal tax		$56,582.15
Normal tax at 2% on $4,000.00		$80.00
Normal tax at 4% on $4,000.00		160.00
Normal tax at 6% on $48,582.15		2,914.93
Surtax on $74,262.14		8,890.78
Total tax		$12,043.71
Less:		
Earned income credit		20.00
Tax liability		$12,025.71
Tax assessed		4,383.19
Deficiency in tax		$7,642.52

Explanation of Changes

In accordance with the provisions of the will you were the sole beneficiary of the Estate of William Blair. There has, therefore, been included in your income the total distributive earnings of the estate.

You are advised that this office holds that the assignments made by you to your children do not change the taxable status of the proceeds received by you from the estate. Committee on Appeals and Review Recommendation 877, Cumulative Bulletin I-1, Page 239, United States Board of Tax Appeals, Volume 2, 1109—Appeal of Gideon N. Stieff.

[fol. 10] 1925

Net income reported on return		$14,405.29
Add:		
Understatement of income from the Estate of William Blair:		
Other income	$52,617.24	
Dividends	12,739.65	65,356.89
Adjusted net income		$79,762.18
Less:		
Exemption	$1,500.00	
Dividends	16,680.00	18,180.00
Income subject to normal tax		$61,582.18
Normal tax at 1½% on $4,000.00		$60.00
Normal tax at 3% on $4,000.00		120.00
Normal tax at 5% on $53,582.18		2,679.11
Surtax on $79,762.18		7,817.19
Total tax		$10,676.30
Less:		
Earned income credit		13.12
Tax liability		$10,663.18
Tax assessed		263.24
Deficiency in tax		$10,399.94

There has been included in your income the total distributive earnings of the Estate of William Blair.

1926

Net income reported on return		$50,476.88
Add:		
Understatement of income from the Estate of William Blair:		
Other income	$49,519.59	
Dividends	8,915.37	58,434.96
Adjusted net income		$108,911.84

Less:		
Exemption	$1,500.00	
Dividends	16,680.00	$18,180.00
Income subject to normal tax		$90,731.84
[fol. 11] Normal tax at 1½% on $4,000.00		$60.00
Normal tax at 3% on $4,000.00		120.00
Normal tax at 5% on $82,731.84		4,136.59
Surtax on $108,911.84		13,442.37
Total tax		$17,758.96
Less:		
Earned income credit	$13.12	
Tax paid at source	29.50	42.62
Tax liability		$17,716.34
Tax assessed		4,839.98
Deficiency in tax		$12,876.36

Explanation of Change

There has been included in your income the total distributive earnings of the Estate of William Blair.

1924		
Tax reported on return	$4,383.19	
Proposed deficiency	7,642.52	
		$12,025.71
1925		
Tax reported on return	$263.24	
Proposed deficiency	10,399.94	
		10,663.18
1926		
Tax reported on return	$4,839.98	
Proposed deficiency	12,876.36	17,716.34
Tax liability stated on Form 866		$40,405.23

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[fol. 12] BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 42313) * * *

ANSWER—Filed February 15, 1929

The Commissioner of Internal Revenue by C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph 1.

2. Admits the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3.

4. Denies that the Commissioner committed the errors alleged in paragraph 4.

5. Denies the allegations contained in paragraph 5.

Denies, generally and specifically, each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: Arthur Carnduff, Special Attorney, Bureau of Internal Revenue.

[fol. 13] BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 63741) * * *

Appearances:

For Taxpayer: J. F. Dammann, Esq., C. F. Selfridge, Esq.,

For Comm'r.: B. A. Low, Esq.,

SBA/mhk.

2/14/29.

DOCKET ENTRIES

1932.

Apr. 2. Petition received and filed. Taxpayer notified. (Fee paid)

Apr. 2. Copy of petition served on General Counsel.

May 2. Answer filed by General Counsel.

DOCKET ENTRIES—Continued

1932.

May 12. Copy of answer served on taxpayer. General Calendar.

Nov. 7. Hearing set Dec. 13, 1932.

Nov. 18. Motion to place on Reserve Calendar filed by taxpayer. 11/21/32 granted to Reserve A.

Nov. 18. Motion to place on Reserve Calendar filed by General Counsel. No action necessary.

1933.

Mar. 29. Motion to place on Day Calendar filed by General Counsel. 4/3/33 granted.

Apr. 5. Hearing set May 8, 1933.

Apr. 7. Motion for Circuit Hearing at Chicago, Ill. filed by taxpayer. 4/10/33 granted.

Jul. 24. Hearing set week of 8/28/33 at Chicago, Ill.

Sep. 5. Hearing had before S. J. McMahon, Div. 16. Submitted on merits. Consolidated for hearing with docket 42313. Stipulation of facts filed. On petitioner's motion to continue, taken C. V. A. Petitioner's brief due Oct. 1, 1933 (Brief on motion to continue).

Sep. 18. Transcript of hearing of 9/5/33 filed.

Oct. 2. Brief filed by taxpayer.

1934.

Apr. 18. Order that proceedings be restored to Day Calendar of May 2, 1934 for further hearing regarding stipulation of facts filed 9/5/33, entered.

May 2. Hearing had before Mr. McMahon, Div. 16. Submitted on merits. No briefs. (Further hearing.)

May 14. Transcript of hearing of May 2, 1934 filed.

[fol. 14]

1935.

Jan. 31. Findings of fact and opinion rendered, S. J. McMahon, Div. 16. Decision will be entered under Rule 50.

Mar. 1. Notice of settlement filed by General Counsel.

Mar. 4. Hearing set March 20, 1935 under Rule 50.

Mar. 19. Consent to settlement filed by taxpayer.

Mar. 25. Decision entered, S. J. McMahon, Div. 16.

DOCKET ENTRIES—Continued

1935.

Jun. 12. Petition for review by U. S. Circuit Court of Appeals (7) with assignments of error filed by General Counsel.

June 27. Proof of service filed by General Counsel.

Aug. 1. Motion for extension to Sept. 12, 1935 to prepare and transmit record filed by General Counsel.

Aug. 1. 1935. Order enlarging time to Sept. 12, 1935 to prepare and transmit record entered.

Sep. 9. Agreed statement of evidence lodged.

Sep. 9. Præcipe with proof of service thereon filed.

Sep. 12. Order enlarging time to Nov. 1, 1935 for preparation of evidence and delivery of record entered.

Oct. 2. Order that clerk of the Board be directed to omit any statement of evidence in the record to be transmitted by him to the U. S. Circuit Court of Appeals for the 7th Circuit entered. (See memorandum attached.)

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 63741) * * *

PETITION—Filed April 2, 1932

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (IT:AR:D-1), ——————— dated February 5, 1932, and as a basis of (AHS-60D) his petition alleges as follows:

(1) Petitioner is an individual with residence at 1516 Lake Shore Drive, Chicago, Illinois.

(2) The notice of Deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the taxpayer on February 5, 1932. In said letter of deficiency reference is [fol. 15] made to the report of the Internal Revenue Agent in Charge at Chicago. A copy of said report is attached

hereto and marked Exhibit "B". The report of the Revenue Agent refers to a report on the return of the estate of William Blair; a copy of the report of said estate is attached hereto and marked Exhibit "C".

(3) The taxes in controversy are income and profit taxes for the calendar year 1929. The amount in controversy is $14,533.58.

(4) The determination of the tax set forth in said Notice of Deficiency is based on the following errors:

(a) The Commissioner of Internal Revenue has erroneously included as income of this taxpayer the sum of $57,000 as additional income from the William Blair trust on account of $57,000 which was paid in 1929 by the trustees of said trust to children of the taxpayer pursuant to assignments to said children of part of the taxpayer's interest in said trust estate.

(b) The Commissioner of Internal Revenue has erroneously increased the net income of said William Blair trust and erroneously increased the income of this taxpayer as the life beneficiary of said trust in the amount of $14,541.34 on account of the disallowance of the following deductions claimed as necessary expense in the operation of a certain building belonging to said trust located at 608 South Wabash Avenue, Chicago, Illinois:

(1)	$5,580.	as a commission paid on April 30, 1929, to a real estate broker for services in connection with the consummation of a ten year lease on said premises.
(2)	10,000.	paid for expenditures for repairing said building.
	$15,580.	Total disallowed.

The Commissioner did not rule that these two items were not deductible but ruled that the total amount was not deductible in 1929. He allowed $1038.66 being one-tenth of the said total as the proper proportion of the total for the eight months in 1929 that the tenant occupied the premises. The net disallowance, therefore, was $14,541.34.

(c) The Commissioner of Internal Revenue erred in not allowing this petitioner a deduction for a part of the sum

of $17,619.46 paid out by them in 1925 on account of commissions paid to real estate brokers for leases on trust [fol. 16] property and legal fees in connection therewith. The Trustees claimed this deduction on their return for the year 1925. The Commissioner disallowed said deduction on the ground that it should be spread over the period of the lease. The Commissioner should be consistent and should allow a proportionate deduction in 1929 if his contention is sustained by the Board in Docket Number 42313. We estimate that under the Commissioner's theory, the proportionate part of this expense attributable to 1929 is $762.57.

(5) The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) William Blair, the father of this petitioner and a resident of the City of Chicago, County of Cook and State of Illinois, died on or about the 10th day of May, 1899, leaving a Last Will and Testament, wherein he provided, among other matters, for the creation of a trust estate in the hands of the Trustees named therein, Chauncey J. Blair and Edward Tyler Blair. By the terms of this trust the wife of the decedent was to receive one-half of the net income of the said trust estate, and the son of the decedent, the petitioner herein, was to receive the other one-half. The wife of the decedent died on or about May 13th, 1923, and thereafter by the terms of said will, petitioner, Edward T. Blair, was entitled to all of the income from the trust. Thereafter the petitioner, Edward T. Blair, assigned and transferred to his children, Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, respectively, an interest in his life estate in said William Blair trust.

The interest assigned to Lucy Blair Linn was represented by $18,000 of the income of said trust until the death of either Edward T. Blair or Lucy Blair Linn. The transfer was irrevocable. It was represented by three indentures dated April 2, 1923, September 1, 1924 and December 1, 1925. A notice in writing of each of these instruments was delivered to the Trustees of the William Blair trust and said Trustees accepted said transfers, and in the year 1929 paid to Lucy Blair Linn $18,000 of the income of the trust.

(a-1) The interest assigned to Edith Blair was represented by $15,000 of the income of said trust until the death of either Edward T. Blair or Edith Blair. The transfer was irrevocable. It was represented by three indentures dated April 2, 1923, September 1, 1924 and May 1, 1925. A notice in writing of each of these instruments was delivered to the Trustees of the William Blair trust and said Trus- [fol. 17] tees accepted said transfers, and in the year 1929 paid to Edith Blair $15,000 of the income of the trust.

(a-2) The interest assigned to Edward Seymour Blair was represented by $18,000 of the income of said trust until the death of either Edward T. Blair or Edward Seymour Blair. The transfer was irrevocable. It was represented by three indentures dated April 2, 1923, September 1, 1924 and January 2, 1925. A notice in writing of each of these instruments was delivered to the Trustees of the William Blair trust and said Trustees accepted said transfers, and in the year 1929 paid to Edward Seymour Blair $18,000 of the income of the trust.

(a-3) The interest assigned to William McCormick Blair was represented by $6000 of the income of said trust until the death of either Edward T. Blair or William McCormick Blair. The transfer was irrevocable. It was represented by two indentures dated January 2, 1925 and January 2, 1926. A notice in writing of each of these instruments was delivered to the Trustees of the William Blair trust and said Trustees accepted said transfers, and in the year 1929 paid to William McCormick Blair $6000 of the income of the trust.

(a-4) Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair each filed income tax returns for the year 1929, reported thereon the income so received from the William Blair trust and paid proper tax thereon. Nevertheless, the Commissioner of Internal Revenue has ruled that all of said income was taxable to this petitioner. This Board held in the case of Blair v. Commissioner, 18 B. T. A. 69, involving the income of this petitioner for the year 1923, that the income from the interests so assigned was not income of this petitioner. The Commissioner of Internal Revenue has appealed from this deci-

sion to the United States Circuit Court of Appeals for the Seventh Circuit. The appeal is still pending.

(b) In 1929 the Trustees of the William Blair trust negotiated a lease of one of the buildings owned by them, located at 608 South Michigan Avenue, Chicago, Illinois, for a ten-year term. In the same year they paid to the real estate broker, who assisted in the negotiation of the lease, $5580 as his commission; also in 1929 the Trustees paid $10,000 for repairs to the building, the building had been vacant for some time, and ordinary repairs had accumulated. The items for which the $10,000 was paid were repairs to the roof, repairs to the elevator, repairs to the floors, parti- [fol. 18] tions, etc. The commission paid and the repairs were all necessary business expense. This trust estate owns a considerable amount of improved real estate in Chicago. The repairs are constantly being made to the properties, leases are made from time to time as prior leases expire or default is made by the tenant. Leasing and operating of these premises are a principal part of the business of the trust. The Commissioner has disallowed both of these deductions. He has ruled that these expenditures are not deductible in the year in which they were paid. He has, however, prorated this expense over the term of the lease and has allowed a deduction of $1038.66 as representing the part applicable to the eight months of the term in 1929. But the Trustees have decided to pay these items out of 1929 income and they deducted them in determining the taxpayer's income.

(c) In 1925 the Trustees of the William Blair trust executed a twenty-five year lease on property owned and operated by the trust situated at 180 West Randolph Street, Chicago, Illinois. In connection therewith it paid $11,640 as a commission to the real estate broker who assisted in the negotiation of the lease, and $200 for legal services in connection therewith. In their return for that year the Trustees deducted the total amount of these expenditures as business expense in that year. The Commissioner disallowed the deduction and ruled that only a proportionate part thereof should be allowed.

(c-1) In 1925 the Trustees of the William Blair trust executed a twenty-year lease on real estate owned and

operated by them at 729 South Wabash Avenue, Chicago, Illinois, and paid as a commission to the real estate broker $5479.46 and $300.00 for legal services. The Trustees claimed the deduction of these two amounts as a necessary business expense paid in 1929. The Commissioner, however, disallowed the deduction and ruled that the Trustees were entitled to a proportionate amount thereof in that year. These two rulings of the Commissioner were appealed from by Edward T. Blair in the case of Blair v. Commissioner, Docket No. 42313, in the United States Board of Appeals. This case has not yet come up for hearing. In preparing the income tax returns for the year 1929 for the trust and for Mr. Edward T. Blair, no deduction was taken on account of these expenditures made in 1925. The Trustees and Mr. Blair have relied upon the correctness of their original deduction, But the Commissioner should have been consistent and on his audit should have allowed a de-[fol. 19] duction for one-twenty-fifth (1/25) of the expenses paid for commission and legal fees, totalling $11,840.00 for the property at 180 West Randolph Street. He also should have allowed one-twentieth of the $5,779.46 paid in 1925 for commission and legal fees on the property at 729 South Wabash Avenue for the same reason.

Wherefore, the petitioner prays that this Board may hear the proceeding and redetermine his tax liability for the year 1929; that this Board may hold:

(1) That the income paid by the Trustees of the William Blair Trust in 1929 to Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, totalling $57,000 was not income of this taxpayer and not taxable to him.

(2) That the $5580 paid for commission and the $10,000 paid for repairs to the building at 608 South Michigan Avenue are properly deductible as necessary business expense in the year 1929.

(3) That this taxpayer is entitled to a deduction of a pro rata part of the expenditures made in 1925 for commissions and legal services on two leases if the Commissioner's ruling that the total of those expenditures was not properly

deductible in 1925, and that there is no deficiency due from the petitioner for the year 1929.

J. F. Dammann, Stuart J. Templeton, Calvin F. Selfridge, Attorneys for Petitioner, 140 South Dearborn Street, Chicago, Illinois. Wilson & McIlvaine of Counsel, 140 South Dearborn Street, Chicago, Illinois.

Duly sworn to by Edward T. Blair. Jurat omitted in printing.

[fol. 20] EXHIBIT "A" TO PETITION

NP-2-28.

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address Reply to Commissioner of Internal Revenue and Refer to

Feb. 5, 1932.

Mr. Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois.

SIR:

You are advised that the determination of your tax liability for the year(s) 1929 discloses a deficiency of $14,533.58, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, If Your Do Not Desire To Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the en-

closed agreement, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870.

[fol. 21] Statement

IT:AR:D-1
AHS-60D

In re Mr. Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois

Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1929	$16,236.15	$1,702.57	$14,533.58

The report of the internal revenue agent in charge at Chicago, Illinois, covering an examination of your books of account and records for 1929 has been reviewed by this office together with your protest and a memorandum of a conference held in the internal revenue agent's office July 17, 1931 resulting in the above deficiency in tax outlined as follows:

Net Income

Net income reported on return		$35,524.85
Add:		
1. Other income from trust estate		52,439.05
2. Dividends		22,702.29
Adjusted net income		$110,666.19

Computation of Tax

Adjusted net income		$110,666.19
Less:		
Dividends	$42,484.00	
Personal exemption	1,500.00	
		43,984.00
Balance subject to normal tax		$66,682.19

Computation of Tax—Continued

Normal tax at ½% on $4,000.00	$20.00
Normal tax on 2% on $4,000.00	80.00
Normal tax at 4% on $58,682.19	2,347.29
Surtax on $110,666.19	13,793.24
Total tax due	$16,240.53
Less:	
Earned income credit	4.38
Total tax assessable	$16,236.15
Tax assessed	1,702.57
Deficiency in tax	$14,533.58

[fol. 22] Explanation of Changes

1 and 2. This office has sustained the revenue agent in determination of the income of the Trust Estate of William Blair after consideration of your protest and holds that the income is 100% taxable income on your return pending a court decision covering the year 1923.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1929 the Income Tax Unit will be unable to afford you an opportunity to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

A copy of this communication has been transmitted to your representative, Mr. Calvin F. Selfridge, 140 South Dearborn Street, Chicago, Illinois, who has a power of attorney on file in this office.

EXHIBIT "B" TO PETITION

Memorandum

In re Edward T. Blair, 1516 Lake Shore Drive, Chicago, Ill.

Examining Officer: B. H. Ryan

Year	Additional Tax
1929	$14,533.58

Preliminary Statement

Index:

Pages 3.
Schedules 1—3.

Taxpayers income is received from the Estate of William Blair, from dividends and transactions in securities.

Taxpayer is single.

Taxpayer is the trustee and was the sole beneficiary of the Estate of William Blair until he assigned a part of his life interest in the income to his children.

This assignment was not recognized by the Commissioner, and the appeal of taxpayer was decided by the Board favor-
[fol. 23] able to taxpayer 18 BTA-69. The Commissioner did not acquiesce. See report on Estate of William Blair submitted herewith.

The changes made in this report were explained to Miss Wood, Secretary. She does not approve.

Summary

1929 Increase in Income	$75,141.36	
Additional Tax		$14,533.58

Schedule 1

Year ended 12-31-1929.

Net Income

Net income as disclosed by return		$35,524.85
As corrected		110,666.19
Net adjustment		$75,141.34
Unallowable deductions and additional income:		
(a) William Blair Estate	$52,439.05	
(b) Dividends	22,702.29	
Total		75,141.34
Net Adjustment as above		$75,141.34

Schedule 1-A

Explanation of Items

(a) Income reported from Estate of William Blair $23,175.74 should be $75,614.79. Increase of $52,439.05 of "other Income."

(b) Dividends reported $19,781.71. Should be $42,484.00. Increase of $22,702.29.

Increase dividends:

William Blair Estate Reported	$11,681.71
William Blair Estate Corrected	30,784.00
William Blair Estate Increase	$19,102.29
Nash Motor Increase	3,600.00
	$22,702.29
Reported on return	19,781.71
Total dividends	$42,484.00

See report submitted herewith on Estate of William Blair for detail information re the above changes.

[fol. 24] Items Not Changed

Other items of income and deductions were verified and found correct as reported.

Schedule 2

Year ended 12-31-1929.

Computation of Tax

Net income (Schedule 1)		$110,666.19
Income subject to surtax		$110,666.19
Less: Dividends	$42,484.00	
Personal exemption and credit for dependents	1,500.00	43,984.00
Balance subject to normal tax		$66,682.19
Normal tax at ½% on $4,000.00	20.00	
Normal tax at 2% on $4,000.00	80.00	
Normal tax at 4% on $58,682.19	2,347.29	
Surtax on $110,666.19	13,793.24	
		16,240.53
Total tax assessable		$16,240.53

Less: Credit for earned net income (Sched. 3)	$4.38	4.38
Total tax assessable		$16,236.15
Tax previously assessed		1,702.57
Additional tax to be assessed		$14,533.58

Schedule 3

Year ended 12-31/29.

Computation of Earned Income Credit

Income Tax

Earned net income		$5,000.00
Less personal exemption and credit for dependents		1,500.00
Balance		$3,500.00
Normal tax at ½% on $3,500	$17.50	
Total Tax		$17.50
Credit of 25%		$4.38

[fol. 25] EXHIBIT "C" TO PETITION

Memorandum.

In re William Blair Esate, (1041) W. McCormick Blair, Trustee, 137 West Jackson Boulevard, Chicago, Illinois

Examining Officer, B. H. Ryan

Additional Income, 1929, $14,541.34.

Preliminary Statement

Index:
Pages: 1 to 2
Schedules: 1 to 2.

This trust Estate was created under the will of William Blair, and the income was payable to Edward T. Blair, who is also the Trustee.

Edward T. Blair made an assignment of a part of his life interest in the income of the Estate to his children, viz:

W. McCormick Blair.
Seymour Blair.
Edith Blair and Lucy Blair Linn.

The action of the Commissioner in taxing the entire income to Edward T. Blair was protested and was carried to the Tax Appeals Board. The assignment was held valid by the Board in their decision reported in B. T. A. #18, page 69. The Commissioner, however, did not acquiesce in this decision, and this examination shows distribution of the entire Estate income to Edward T. Blair.

Reports of examinations of the various beneficiaries under assignment, are submitted herewith.

The change made was discussed with Mr. Larson, of Lee, Higginson & Company. He does not agree.

[fol. 26] Summary

1929 Increase in income	$14,541.34

Schedule 1

Year ended 12/31/34.
Year ended 12/31/1929.

Net Income

Net income as disclosed by return		$91,857.45
As corrected		106,398.79
Net adjustment		14,541.34
Unallowable deductions and additional income:		
(a) Increase in rental	$15,580.00	
Total		15,580.00
Nontaxable income and additional deductions:		
(b) Expense	1,038.66	
Total		1,038.66
Net adjustment as above		14,541.34

Schedule 1-A

Year ended 12/31/1929.

Explanation of Items Changed

(a) (1)

$14,541.34 represents increase in rental property at 608 South Michigan Avenue.

On April 30, 1929 a ten year lease was negotiated and a commission of $5,580.00 paid. $10,000 was paid by the Es-

tate to the tenant, Irwin & Company for expenditures made by them for new elevators and other changes required by them. Other expense of $1,284.03 for levels and shoring and $2,718.70 for general repairs, have been allowed. $1,038.66, or 1/10 of $15,580 for 8 months has been allowed in this report.

Items not changed

Other income reported and deductions claimed were verified and accepted as reported.

Schedule 2

Year ended 12/31/1929.

Distribution of Income

Name and Address	Per Cent	Cash Dividends	Other Income
Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois	100	$30,784.00	$75,614.79

[fol. 27] Before United States Board of Tax Appeals

* * * (Caption—No. 63741) * * *

Answer—Filed May 2, 1932

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

(1) Admits the allegations contained in paragraph (1) of the petition.

(2) Admits the allegations contained in paragraph (2) of the petition.

(3) Admits the allegations contained in paragraph (3) of the petition.

(4) Denies that the Commissioner of Internal Revenue erred in manner and form as alleged in paragraph (4), subparagraphs (a) to (c) inclusive, of the petition.

(5) Denies the allegations contained in paragraph (5), subparagraphs (a) to (c), inclusive, and subdivisions thereunder, of the petition.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's petition be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: Prew Savoy, Special Attorney, Bureau of Internal Revenue.

acb 4/29/32.

[fol. 28] BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption) * * *

STIPULATION OF FACTS—Filed at Hearing September 5, 1933

It Is Hereby Agreed by and between the petitioner, Edward T. Blair, by his attorneys, J. F. Dammann, Stuart J. Templeton and Calvin F. Selfridge, and the respondent, the Commissioner of Internal Revenue, by his attorneys, E. Barrett Prettyman, General Counsel for the Bureau of Internal Revenue, that the following facts are facts and may be included in the findings of fact by the Board:

1. The petitioner is a resident of Chicago, Illinois. His father, William Blair, was also a resident of Chicago. The latter died May 10, 1899, leaving a Last Will and Testament which was duly admitted to probate in the Probate Court of Cook County, Illinois. A true copy of said will is marked "Petitioner's Exhibit 1" and may be received in evidence in these cases as though it were the original duly admitted in open court.

2. The wife of said William Blair died on or about March 13, 1923.

3. On or about April 2, 1923, the petitioner, Edward T. Blair, made, executed and delivered a certain Indenture in which he was the party of the first part and Lucy Blair Linn was the party of the second part. A copy of said Indenture is marked "Petitioner's Exhibit 2" and the same

may be admitted in evidence as though it were the original duly admitted in open court.

4. On or about April 2, 1923, the petitioner, Edward T. Blair, made, executed and delivered a certain Indenture in which he was the party of the first part and Edith Blair was the party of the second part. A copy of said Indenture is marked "Petitioner's Exhibit 3" and the same may be admitted in evidence as though it were the original duly admitted in open court.

5. On or about April 2, 1923, the petitioner, Edward T. Blair, made, executed and delivered a certain Indenture in which he was the party of the first part and Edward Seymour Blair was the party of the second part. A copy of said Indenture is marked "Petitioner's Exhibit 4" and the [fol. 29] same may be admitted in evidence as though it were the original duly admitted in open court.

6. Thereafter on their respective dates the petitioner made, executed and delivered two other Indentures in which he was the party of the first part and said Lucy Blair Linn was the party of the second part, which Indentures were dated September 1, 1924 and December 1, 1925, respectively. Copies of said Indentures are marked "Petitioner's Exhibit 5" and "Petitioner's Exhibit 6" respectively and the same may be received in evidence as though they were the originals duly admitted in open court.

7. On their respective dates the petitioner made, executed and delivered two other Indentures in which he was the party of the first part and said Edith Blair was the party of the second part, which Indentures were dated September 1, 1924 and May 1, 1925, respectively. Copies of said Indentures are marked "Petitioner's Exhibit 7" and "Petitioner's Exhibit 8" respectively and the same may be received in evidence as though they were the originals duly admitted in open court.

8. On their respective dates the petitioner made, executed and delivered two other Indentures in which he was the party of the first part and said Edward Seymour Blair was the party of the second part, which Indentures were dated September 1, 1924 and January 1, 1925 respectively. Copies of said Indentures are marked "Petitioner's Exhibit 9"

and "Petitioner's Exhibit 10" respectively and the same may be received in evidence as though they were the originals duly admitted in open court.

9. On their respective dates the petitioner made, executed and delivered two other Indentures in which he was the party of the first part and William McCormick Blair was the party of the second part, which Indentures were dated January 2, 1925 and January 2, 1926 respectively. Copies of said Indentures are marked "Petitioner's Exhibit 11" and "Petitioner's Exhibit 12" respectively and the same may be received in evidence as though they were the originals duly admitted in open court.

10. The petitioner, Edward T. Blair and his son, William McCormick Blair were, during the years 1923 to 1929 inclusive, and still are, the duly authorized and acting trustees of the trust created by the will of said William Blair.

11. On the respective dates of said Indentures (Petitioner's Exhibits 2 to 12 inclusive) the petitioners notified said trustees in writing of the assignments contained [fol. 30] therein and directed said trustees to make payments direct to the assignees. The said trustees accepted said assignments and noted their acceptance on the face of said notices. All of said notices and the acceptances by said trustees are substantially identical in form. A copy of the notice relating to the assignment of April 2, 1923, to Lucy Blair Linn is marked "Petitioner's Exhibit 13" and the same may be admitted in evidence as though it were the original duly admitted in open court.

12. During the years 1924, 1925, 1926 and 1929 the said trustees of the William Blair trust distributed directly to Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair the following amounts out of the income of the William Blair trust:

	1924	1925	1926	1929
Lucy Blair Linn.....	$10,000.00	$12,500.00	$18,000.00	$18,000.00
Edith Blair	10,000.00	14,000.00	15,000.00	15,000.00
Edward Seymour Blair.....	10,000.00	18,000.00	18,000.00	18,000.00
Wm. McCormick Blair.....	.....	4,000.00	6,000.00	6,000.00

13. Said Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair each filed income tax returns for each of said years in which they reported the

amounts thus distributed to them by the trustees of the William Blair trust, and they each paid to the Collector of Internal Revenue in Chicago the tax due thereon. Since the ruling of the Commission referred to in the following paragraph they have filed claims for the refund of the tax on such income. No refunds will be made until these cases are finally determined.

14. The respondent, the Commissioner of Internal Revenue, in auditing the fiduciary returns of the trustees of the William Blair trust and in auditing the returns of Edward T. Blair, Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, adjusted said returns to show that all of the net income of said trust was distributed or distributable to Edward T. Blair, and the respondent has ruled that the petitioner should pay an income tax on all of said income and that no tax was due from Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair on account of the part of the trust income distributed to them.

15. During the year 1925 the William Blair trust owned five pieces of real estate in or about Chicago, Illinois, including those located at 180 West Randolph Street, 729 South Wabash Avenue and 608 South Michigan Avenue. [fol. 31] Said trust still owns said five pieces of real estate in Chicago.

16. During the year 1925 the trustees of said trust leased the piece of real estate located at 180 West Randolph Street for a term of twenty-five (25) years. Incident to the making of this lease they paid Eleven Thousand Six Hundred and Forty Dollars ($11,640.00) as a commission to a real estate broker and Two Hundred Dollars ($200.) for legal services.

17. During said year 1925, said trustees also executed and delivered a lease for a term of twenty (20) years on the property at 729 South Wabash Avenue. Incident to the making of this lease they paid Five Thousand Four Hundred Seventy-nine Dollars and Forty-six Cents ($5,479.46) as a commission to a real estate broker and Three Hundred Dollars ($300.) for legal services.

18. In the year 1929 said trustees executed and delivered a lease for a period of ten years on the property at 608

South Michigan Avenue. Incident to the making of said lease they paid Five Thousand Five Hundred Eighty Dollars ($5,580.) as a commission to a real estate broker.

19. Prior to the execution of said lease in 1929, the property at 608 South Michigan Avenue had been vacant for several months and was in need of extensive repairs. The lessors agreed that in lieu of making repairs on said premises they would allow to the lessee an aggregate amount of Ten Thousand Dollars ($10,000.) for repairs, improvements and additions to the premises on the condition that not less than that amount should be expended exclusive of trade fixtures and fittings. During 1929 the trustees paid said Ten Thousand Dollars ($10,000.) to the contractor employed to do said work. It is agreed that Five Thousand Dollars ($5,000.) thereof was for improvements to the building having a probable useful life equal to the term of said ten-year lease and Five Thousand Dollars ($5,000.) was in payment for ordinary repairs to the building. And it is agreed that Five Thousand Dollars ($5,000.) thereof is deductible in 1929 and the other Five Thousand Dollars ($5,000.) should be spread over the remaining period of said lease.

20. The trustees of said William Blair trust charged the commissions and legal fees incurred in connection with said three leases and the Ten Thousand Dollars ($10,000.) paid to the contractor for the work at 608 South Michigan Avenue against the income of the trust so that the net income to be distributed to the petitioner was actually reduced by the amount of these expenditures.

[fol. 32] 21. On or about March 24, 1933, the trustees of said William Blair trust filed their bill of complaint in the Superior Court of Cook County, Illinois, in Chancery, General Number 576471, praying that the court construe the will of said William Blair and advise the trustees whether the assignments from Edward T. Blair to Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair are valid and advise said trustees whether they should pay to said assignees part of the net income of the trust estate pursuant to said assignments.

22. It is further stipulated and agreed that the proofs in these cases (Docket numbers 42313 and 63741) shall

remain open for the introduction in evidence of the ultimate decree of the Superior Court of Cook County, Illinois, in said proceeding No. 576471 entered at the final termination of said proceedings, and it is further stipulated that a certified copy of such ultimate decree may be received in evidence in these cases, subject to the respondent's objection as to its materiality.

J. F. Dammann, Stuart J. Templeton, Calvin H. Selfridge, Attorneys for Petitioner. E. Barrett Prettyman, Attorneys for Respondent.

Petitioner's Exhibit 1

Know All Men by These Presents, that I, William Blair of the City of Chicago, in the County of Cook and State of Illinois, being of sound and disposing mind and memory, do make and publish this to be my last will and testament, hereby revoking all former wills and codicils thereto by me at any time made.

As to all the property and estate real and personal, of which I shall die seized and possessed, or to which I shall be entitled at the time of my decease, I give, devise, bequeath and dispose thereof, as follows, viz:

First. I order and direct my executors hereinafter named to pay and discharge all my just debts and funeral expenses and the specific money bequests herein given as soon after my decease as may be practicable.

Second. To my wife Sarah Maria Blair I give and bequeath all my household furniture and effects of every kind [fol. 33] and nature, including paintings, portraits, engravings, prints books, clothing silver plate and family supplies; also all my horses carriages harnesses and other implements and appliances used therewith the same to be for her sole use. And it is my will and I do hereby request that my said wife be permitted immediately after my decease to take hold and retain exclusive possession and control of the same as her own property and that my executors hereinafter named be neither required nor permitted to make or return into court any account or inventory thereof whatever.

Third. To my said wife I give and bequeath the sum of five thousand dollars in money.

Fourth. To my said wife I give devise and bequeath the homestead property and estate in which we now reside in the City of Chicago being situated on Michigan Avenue, number two hundred and thirty and described as follows, to wit: The south twenty-eight (28) feet of lot eight (8) and the north twenty-four (24) feet of lot nine (9) all in block twelve (12) in fractional section fifteen (15) addition to Chicago, to have and to hold the same to her for and during the full term of her natural life; she paying the taxes and assessments thereon and keeping the improvements thereon in good repair and condition.

Fifth. To my son Edward Tyler Blair, I give and bequeath my English gold watch my gold headed cane and any other articles of my personal use which he may desire; also the sum of five thousand dollars in money.

Sixth. To my daughter Anna Reubina Blair wife of my said son, I give and bequeath the sum of five thousand dollars in money.

Seventh. To Edith Blair, William McCormick Blair and Lucy Blair, children of my said son Edward Tyler Blair and his wife Anna Reubina Blair, I give and bequeath each the sum of one thousand dollars in money; and to each and every other child of my said son by his said wife which may hereafer be born to them and living at the date of my death I give and bequeath the sum of one thousand dollars in money and to the said William McCormick Blair I also give the gold watch and chain which I now use.

Eighth. To my sister Caroline Crosby I give and bequeath the sum of three thousand dollars in money, and in case she shall depart this life before my decease, it is my will that the said sum of money go and be paid to her daughter Mary E. Neely, if she be living at the time of my [fol. 34] decease; and I further give and bequeath to John C. Neely Jr. and Caroline B. Neely children of said Mary E. Neely, each the sum of one thousand dollars.

Ninth. To my sister Ann Eliza Densmore wife of Eleazer R. Densmore I give and bequeath the sum of three thousand dollars in money; and in case she shall depart this life before my decease it is my will that the said sum of money go and be paid to her daughter, Caroline B. Densmore if she is living at the time of my decease; and I further give and

bequeath to the said Caroline B. Densmore the sum of one thousand dollars if she be living at the time of my death.

Tenth. To Eliza Ann Ballard the sister of my said wife I give and bequeath the sum of one thousand dollars in money, if she shall be living at the time of my decease; also to Lavina B. Shumway wife of Edward G. Shumway the sum of one thousand dollars if she shall be living at the time of my decease and to Florence D. Ballard, wife of D. Page Ballard the sum of one thousand dollars, if she be living at the time of my death.

Eleventh. To Ellen S. Stults the sister of my said wife and wife of J. Madison Stults I give and bequeath the five following described promissory notes held by me, to wit: One note for six hundred and fifty dollars, dated December 1st, 1874, signed by said J. Madison Stults, and payable to my order five years after the date thereof; also a note for nine hundred dollars dated October 20th, 1875, and signed by J. Madison Stults and payable to the order of Harriet and Francis Williams and by them endorsed and delivered to me; also one note for nine hundred dollars, dated December 4th, 1880, signed by said J. Madison Stults, payable to Ellen K. Byrnes and assigned to me; also two notes of the said J. Madison Stults, dated October 12th, 1883, payable to Boyer & Eichhorn respectively in six and twelve months from the dates thereof and assigned to me; all of said notes secured by mortgages on lands in Huron County, Ohio; and with the said notes I also give to the said Ellen S. Stults the respective mortgages securing the same; and I also give and bequeath to the said Ellen S. Stults the sum of one thousand dollars in money; and in case she shall die before my decease it is my will that the said five notes and mortgages and the said sum of money go and be transferred delivered and paid to her two daughters Bertha and Sarah, and to the survivor of them, if they or either of them shall be living at the time of my decease.

[fol. 35] Twelfth. To George W. Seymour, a brother of my said wife I give and bequeath a promissory note held by me, for twenty three hundred eighty-six and 80/100 dollars, bearing date the 21st day of December, 1881, signed by him and payable to my order five years after the date thereof, and direct my executors to release and discharge the mortgage given to me as security therefor. I also give

and bequeath to the said George W. Seymour the sum of one thousand dollars in money; and in case she shall depart this life before my decease it is my will that the said note and mortgage and the said sum of money go and be transferred delivered and paid to his wife, Charlotte, and to his son and daughter Frank B. and Anna Seymour and to the survivors and survivor of them, if they or either thereof shall be living at the time of my decease.

Thirteenth. To Rev. John A. Seymour a brother of my said wife, I give and bequeath the sum of one thousand dollars in money, and in case he shall depart this life before my decease it is my will that the said sum of money go and be paid to his wife Sarah K. Seymour and his son George B. Seymour, and to the survivor of them, if they or either of them be living at the time of my decease.

Fourteenth. To my nephew Chauncey J. Blair and my son Edward Tyler Blair, of Chicago, I give devise and bequeath all the rest and residue of my real estate situated in the State of Illinois, including the brick store building standing on the east half of the west half of lot seven (7) in block nineteen (19) in the original town of Chicago, leased by me of the estate of the late John High, deceased, and including also my said homestead above described subject to the life estate therein of my said wife as herein given to her and also all shares of stock in the Merchants National Bank of Chicago and all shares of stock or bonds which I may own at the time of my decease of any municipal corporation or incorporated company. To have and to hold the same to them and to the survivor of them and to their successors, and to the heirs executors and administrators of such survivor and successor, but in trust however to and for the following uses and purposes namely: in trust to hold, manage control, improve and lease the same, at their discretion, and the same to keep well insured and in good and tenantable repair and condition and the same to rebuild in case of damage or destruction by fire or otherwise, and the income from said trust fund and estate to use expend account for and pay as follows to wit:

[fol. 36] A. To pay all the taxes, assessments and premiums for insurance thereon, all the costs and expenses of the necessary repairs upon the said real estate; all the cost and expense of the necessary additions to and altera-

tions and improvements in any of the buildings upon said real estate; all the cost and expense of re-building and repairing any building destroyed or damaged by fire or other casualty and also any and all other costs and expenses necessarily incident to the care management protection and preservation of said trust estate; all of the above to be done and performed by the trustees of said fund and estate as they, in their discretion and judgment shall deem for the best interest thereof and of those interested therein.

B. To pay to my said wife, as the same shall from time to time be received, one equal half part of all the net income which shall arise or accrue from the said trust fund and estate for and during the full term of her natural life.

C. To pay to my said son, as the same shall from time to time be received the other equal half part of all the net income which shall arise or accrue from the said trust fund and estate for and during the full term of his natural life.

D. At and after the decease of my said wife to pay my said son the whole of said net income for and during the full term of his natural life.

E. At and after the decease of my said son, he leaving no child or children, nor the descendants of any deceased child or children, him surviving but leaving his said wife him surviving and my said wife being still living to pay to the said wife of my said son one equal third part of said net income for and during the full term of the natural life of my said wife and to pay to my said wife for and during the full term of her natural life the remainder of said net income, and in such case, after the death of my wife to pay the whole of said net income to the wife of my said son during the remainder of her natural life.

F. At and after the decease of my said son he leaving him surviving his said wife and a child or children, or the descendants of a deceased child or children, and my said wife being still living to pay to my said son's said wife one equal half part of said net income for and during the full term of the natural life of my said wife; the said wife of my said son to receive the said income for the support of herself and for the support and education of the child or

children, and of the descendants of any deceased child or children of my said son.

[fol. 37] *C.* At and after the decease of my said son he leaving him surviving his said wife and a child or children, or the descendants of a deceased child or children, and upon the decease also of my said wife to pay to the said wife of my said son one equal half part of said net income for and during the full term of her natural life; and the remainder of said income during the natural life of my said son's said wife to pay to the child or children of my said son and to the descendants of any deceased child or children of his by right of representation share and share alike, and if any one of the persons entitled to share therein shall be minors such payments shall be made to their legal guardians respectively until they shall arrive at lawful age.

H. At and after the decease of my said wife and of my said son, and of the said wife of my said son, leaving them surviving any child or children or the descendants of any deceased child or children of my said son, then to pay the whole of the net income of said trust fund and estate to the child or children of my said son and to the descendants of any deceased child or children of his, by right of representation share and share alike, until the youngest living child of my said son shall have arrived at the age of twenty-one years, the shares of such as are minors to be paid to their legal guardians respectively and then to distribute transfer assign convey and deliver the whole of said trust fund and estate or so much thereof as shall then remain in their hands and possession, together with all unexpended and undistributed income therefrom to the child and children of my said son, and to the descendants of any deceased child or children of his, by right of representation, share and share alike, to have and to hold the same to them and to their heirs executors administrators and assigns forever.

I. At and after the decease of my said wife, and of my said son and of the said wife of my said son, leaving them surviving no child or children nor any descendants of any deceased child or children of my said son, then to distribute transfer assign convey and deliver the whole of said trust fund and estate, or so much thereof as shall then remain in their hands and possession together with all unexpended and undistributed income therefrom to my heirs at law; to

have and to hold the same to them and their heirs, executors administrators and assigns forever.

Fifteenth. To my said wife and my said son, I give and bequeath all the rest and residue of my property and estate of every name and nature share and share alike and [fol. 38] in case my said wife shall depart this life before my decease, it is my will, and I hereby declare that the said rest and residue of my property and estate shall go, belong and be paid and delivered to my said son, the same to be for his sole use.

Sixteenth. If for any reason my said wife shall desire to sell and dispose of our homestead aforesaid at any time and to reinvest the proceeds of the sale thereof, I hereby authorize and empower the said trustees at her request to join with her in the sale and conveyance thereof, for such price and upon such terms as she and they may deem expedient and to execute and deliver jointly with her a good and sufficient deed of conveyance thereof requisite in law to convey the title thereto in fee simple and in case of such sale and conveyance thereof the said trustees are hereby directed to invest the whole or a part of the proceeds thereof in another homestead for the use of my said wife during her natural life, or in improved unincumbered real estate in the business quarter of the City of Chicago; or part in each as my said wife may desire and in whatever way invested my said wife shall be entitled to the use benefit and income of the entire proceeds of said sale for and during the full term of her natural life and the same shall constitute a portion of the trust fund subject to such use and benefit thereof by my said wife to be dealt with and distributed in the same manner as above herein provided for the remainder of said trust property.

Seventeenth. I hereby also authorize and empower my said trustees to sell and dispose of the building now standing on said lot leased by me of the estate of John High, deceased, and also any and all lands by me owned in this State outside of the present limits of the City of Chicago for such price and prices and upon such terms as they may deem for the best interest of said trust fund and estate and of those interested therein and to make execute and deliver good and sufficient deeds of conveyance therefor requisite in law to convey the title thereto in fee simple. And upon

any such sale and sales and conveyance the said trustees are hereby directed to invest the proceeds of such sales in improved and unincumbered real estate situated in the business quarter of the City of Chicago and in any sale and conveyance which said trustees are authorized to make by the terms of this will the purchaser or purchasers need not see to the application of the purchase money.

The said trustees may in their discretion convert into money all or any part of the stocks and bonds hereby given [fol. 39] to them in trust for the purpose of changing the investment thereof and may invest and reinvest the proceeds and in case of destruction, by fire or other casualty, of improvements on real estate belonging to said trust may also convert into money a portion of the securities belonging to said trust fund if necessary to restore or rebuild such improvements.

Eighteenth. The said trustees shall have no power or authority to sell or dispose of any other portions of my real estate situated within the present limits of the City of Chicago or to mortgage or otherwise encumber any part of said trust fund or estate, or to lease any of said real estate for a term longer than five years, or to anticipate the income of said fund.

Nineteenth. I hereby authorize and empower my executors herein named and such of them as may from time to time be acting as such hereunder to sell and by quit claim deeds to convey any and all right, title and interest which I may have or appear to have, in or to all real estate wherever situated comprising any part of the assets of any business in which I am at the time of my decease, or before then have been interested in partnership with others and I also authorize and empower my said executors at their discretion to settle close up and adjust any business in which I may be engaged at the time of my decease whether alone or in partnership with others with full power and authority at their discretion, to settle adjust and compromise any disputed question claim or matter that may exist or arise in the settlement of my estate.

Twenty. I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time as the same shall be received paid to my said wife and to my said son and to his said wife and to

their children and descendants of children in the cases aforesaid shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth.

Twenty-first. the bequests herein made to and the provisions herein made for my said wife are made and intended and are by her to be accepted in lieu of all dower award or other interest in or allowance from or out of my estate.

[fol. 40] Twenty-second. It is my will and I do hereby direct, that in case from any cause a vacancy should arise in the trusteeship of said trust fund and estate during the lifetime of my friend John C. Neely he be by the court having jurisdiction of the matter appointed to fill such vacancy if he will accept the trust; and in cases of vacancies happening during the lifetime of my said wife and son, or of either of them, it is my will and I hereby request that said court fill the same by the appointment of such person and persons as the remaining trustee, for the time being and my said wife and son and the survivor of them, shall in writing request to be appointed and after the decease of my said wife and son, it is my will that said court fill such vacancies by the appointment of such person and persons as, in the judgment of the court, are suitable and competent to hold and judiciously manage the said trust. And I do hereby give and grant unto each and every person whom any court of competent jurisdiction may at any time appoint as trustee of said trust fund and estate the same powers and authority and discretions over and concerning the said trust fund and estate and in the management thereof, which I have herein given and granted to the trustees thereof herein named and appointed.

Twenty-Third. I give and bequeath to the trustees of Graceland Cemetery improvement Fund one thousand dollars to be kept carefully invested and the income thereof used perpetually for preserving caring for and keeping in good order and repair my cemetery lot in Graceland Cemetery together with any and all grave stones monuments or

other ereetions thereon and in case of failure to so apply said income for a period of two years this bequest shall be and become null and void and the amount thereof may be recovered by my lawful heirs in an appropriate action therefor.

Twenty-fourth. It is my desire that my trustees herein named or such persons as shall be hereafter appointed as such, shall receive a reasonable compensation for their services as such trustees.

I do hereby nominate and appoint my said wife Sarah Maria Blair, my nephew Chauncey J. Blair and my said son Edward T. Blair to be the executors of this my last will and testament and it is my will and I do hereby request that they be not required by the court in which this will may be probated, to give any other than their separate bonds without surety, for the performance of the duties of such executors.

[fol. 41] In Testimony Whereof I hereunto set my hand and seal and publish and declare this to be my last will and testament in the presence of the witnesses named below, this twenty-seventh day of July in the year of our Lord eighteen hundred and eighty-eight.

(On the 7th line of the preceding page the words "trustees of" were inserted before signing.

William Blair. (Seal.)

Signed sealed published and declared by the said William Blair as and for his last will and testament in the presence of us, who in his presence and in the presence of each other and at his request have subscribed our names as witnesses hereto.

Frederick W. Crosby, Chicago, Illinois. Edwin H. Gambes, Evanston, Illinois. Nathan G. Moore, Chicago, Illinois.

The erasures and changes made in pencil have been made as memorandums for a new will which has not at this date been made.

William Blair.

August 11th, 1897.

Will proved and admitted to Record in open court this 16th day of June A. D. 1899.

John H. Batton, Acting Probate Judge.

STATE OF ILLINOIS,
County of Cook, ss:

IN THE PROBATE COURT OF COOK COUNTY

Proved and admitted to Record in open court this 16th day of June A. D. 1899.

James Reddick, Clerk.

Filed May 25, 1899. James Reddick, Clerk.

COUNTY OF COOK, ss:

I, Mitchell C. Robin, Clerk of the Probate Court of Cook County and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be a true and correct copy of the last will and testament of William Blair, deceased, as appears from the [fol. 42] original on file and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Probate Court, at my office, in the City of Chicago, in said County, this 29th day of April, A. D. 1920.

Mitchell C. Robin, Clerk of the Probate Court.

Petitioner's Exhibit 2

This Indenture Made and entered into this 2nd day of April A. D. 1923, by and between Edward T. Blair of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Lucy Blair Linn, of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Six Thousand Dollars ($6,000) for the remainder of the current calendar year, and Nine Thousand Dollars ($9,000) in each calendar year thereafter in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part,

either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, deceased, for Six Thousand Dollars ($6,000) for the remainder of the current calendar year and for Nine Thousand Dollars ($9,000) in each year thereafter of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Lucy Blair Linn. (Seal.)

[fol. 43] Petitioner's Exhibit 3

This Indenture Made and entered into this 2nd day of April A. D. 1923 by and between Edward T. Blair, of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Edith Blair of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollars ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Nine Thousand Dollars ($9,000) in each calendar year (including the remainder of the current calendar year) in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name, or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Nine Thousand Dollars ($9,000) in each year of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Edith Blair. (Seal.)

Petitioner's Exhibit 4

This Indenture Made and entered into this 2nd day of April, A. D. 1923 by and between Edward T. Blair, of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Edward Seymour Blair of the City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1.00) in hand paid by [fol. 44] said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Nine Thousand Dollars ($9,000.00) in each calendar year (including the remainder of the current calendar year) in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in his own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, deceased, for Nine Thousand Dollars ($9,000.00) in each year of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Edward Seymour Blair. (Seal.)

Petitioner's Exhibit 5

This Indenture Made and entered into this 1st day of September A. D. 1924 by and between Edward T. Blair, of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Lucy Blair Linn, of the said City of Chicago, party of the second part Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Two Hundred Fifty Dollars ($250) in each month in addition to the assignment made under date of April 2nd, 1923, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party [fol. 45] of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Two Hundred Fifty Dollars ($250) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Lucy Blair Linn. (Seal.)

Petitioner's Exhibit 6

This Indenture Made and entered into this first day of December, 1925, by and between Edward T. Blair of the City of Chicago, County of Cook, and State of Illinois, party of the first part, and Lucy Linn of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by said

party of the second part, the receipt whereof he hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Five Hundred Dollars ($500) in each month in addition to the assignments already made, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Five Hundred Dollars ($500) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

[fol. 46] All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Lucy Blair Linn. (Seal.)

Petitioner's Exhibit 7

This Indenture Made and entered into this 1st day of September, A. D. 1924 by and between Edward T. Blair, of the City of Chicago County of Cook and State of Illinois, party of the first part, and Edith Blair, of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Two Hundred Fifty Dollars ($250) in each month in addition to the assignment already made, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the

said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Two Hundred Fifty Dollars ($250) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Edith Blair. (Seal.)

[fol. 47] Petitioner's Exhibit 8

This Indenture Made and entered into this first day of May, 1925 by and between Edward T. Blair, of the City of Chicago, County of Cook, and state of Illinois, party of the first part, and Edith Blair of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Two Hundred Fifty Dollars ($250) in each month in addition to the assignments already made, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Two Hundred Fifty Dollars ($250) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of

the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) Edith Blair. (Seal.)

Petitioner's Exhibit 9

This Indenture Made and entered into this 1st day of September A. D. 1924 by and between Edward T. Blair, of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Seymour Blair, of the said City of Chicago, party of the second part Witnesseth:

That the said party of the first part, in consideration of [fol. 48] love and affection and One Dollar ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Two Hundred Fifty Dollars ($250.00) in each month in addition to the assignment already made, in the net income which the said party of the first part now is of or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in his own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Two Hundred Fifty Dollars ($250.00) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by

operation of law, a-d shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) (Edward) Seymour Blair. (Seal.)

Petitioner's Exhibit 10

This Indenture Made and entered into this 2nd day of January, A. D. 1925, by and between Edward T. Blair, of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Seymour Blair, of the said City of Chicago, party of the second part, Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1.00) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Five Hundred Dollars ($500.00) in each month in addition to the assignments already made, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees [fol. 49] under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in his own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, Deceased, for Five Hundred Dollars ($500.00) in each month of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal.) (Edward) Seymour Blair. (Seal.)

Petitioner's Exhibit 11

This Indenture Made and entered into this 2nd day of January A. D. 1925 by and between Edward T. Blair, of the City of Chicago County of Cook and State of Illinois, party of the first part, and William McCormick Blair, of the said City of Chicago, party of the second part Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Four Thousand Dollars ($4000) in each calendar year in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in his own name or in the name of the said party of the first part, to receive and receipt for to the Trustees under the Will of William Blair, Deceased, for Four Thousand Dollars ($4000) in each year of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

[fol. 50] All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order now upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. (Seal. W. McC. Blair. (Seal.)

Petitioner's Exhibit 12

This Indenture Made and entered into this 2nd day of January A. D. 1926 by and between Edward T. Blair of the City of Chicago, County of Cook and State of Illinois, party of the first part, and William McCormick Blair, of the said City of Chicago, party of the second part Witnesseth:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Two Thousand Dollars ($2000) in each calendar year in addition to the assignment already made, in the net income which the said party of the first part now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in his own name or in the name of the said party of the first part, to receive and receipt for to the Trustees under the Will of William Blair, Deceased, for Two Thousand Dollars ($2000) in each year of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, Deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

In Witness Whereof the parties hereto have set their hands and seals the day and year first above written.

Edward T. Blair. W. McC. Blair.

[fol. 51] Petitioner's Exhibit 13

To Edward Tyler Blair and William McCormick Blair, as Trustees under the Last Will and Testament of William Blair, Deceased:

You are hereby notified that I have this day assigned, transferred and set over to my daughter, Lucy Blair Linn,

an interest amounting to Six Thousand Dollars ($6,000.00) for the remainder of the current calendar year, and Nine Thousand Dollars ($9,000.00) in each calendar year thereafter in the net income which may become due and payable to me during my life from you as Trustees under the Last Will and Testament of William Blair, Deceased; and that said Lucy Blair Linn is authorized to sign and receipt to you, either in her own name, or in my name, for Six Thousand Dollars ($6,000.00) for the remainder of the current calendar year, and Nine Thousand Dollars ($9,000.00) in each calendar year thereafter of the income and moneys which shall become payable to me during my life under or by virtue of the terms and provisions of said Last Will and Testament of William Blair, Deceased; and that the said receipts of said Lucy Blair Linn for the income paid to her in pursuance hereof shall be a sufficient voucher for the income so paid to her, and shall have the like effect as though such receipts and vouchers were signed by me in my own proper person, and you are hereby requested and directed to pay to said Lucy Blair Linn out of the net income of said estate Six Thousand Dollars ($6,000.00) during the remainder of the current calendar year, and Nine Thousand Dollars ($9,000.00) in each calendar year thereafter, said payments to be in such installments as may be convenient to said Trustees.

In Witness Whereof I have hereunto set my hand and seal this 2nd day of April, A. D. 1923.

Edward T. Blair. (Seal.)

Accepted this 2d day of April, A. D. 1923.

Edward T. Blair, W. McC. Blair, As Trustees under the Last Will and Testament of William Blair, Deceased.

[fol. 52] PETITIONER'S EXHIBIT No. 14

U. S. Board of Tax Appeals

Admitted in Evidence May 2, 1934

Docket Nos. 42313, 63741

No. 37406

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FEBRUARY TERM, A. D. 1934

EDWARD TYLER BLAIR and WILLIAM McCORMICK BLAIR, as Trustees Under the Last Will and Testament of William Blair, Deceased, Complainants-Appellees,

vs.

LUCY BLAIR LINN, EDITH BLAIR, EDWARD SEYMOUR BLAIR, William McCormick Blair and Edward Tyler Blair, Individually, Defendants-Appellants

Appeal from Superior Court, Cook County

Honorable Denis E. Sullivan, Presiding Judge

Abstract of Record

Wilson & McIlvaine, Attorneys for Appellants.

[fol. 53] Placita.

Bill of complaint as follows:

Your orators, Edward Tyler Blair and William McCormick Blair, as trustees under the last will of William Blair, deceased, respectfully represent unto Your Honors as follows:

1. That said William Blair was in his lifetime a resident of the City of Chicago, in the County of Cook and State of Illinois, and died on or about the 10th day of May, 1899, leaving a last will and testament dated July 27, 1888, which was duly admitted to probate by the Probate Court of Cook County in the State of Illinois, a copy of which said last will and testament is attached hereto marked Exhibit A and made a part of this bill; that the estate of William

Blair, deceased, has been duly and fully administered in said Probate Court in accordance with the terms of said last will and testament, and said estate has been declared settled by said court.

2. That by paragraph fourteenth of said last will William Blair, the testator, provided, amongst other matters, [fol. 54] for the creation of a trust estate in the hands of the trustees named therein, to wit, Chauncey J. Blair and Edward Tyler Blair, and the said Chauncey J. Blair is now deceased and has been succeeded by William McCormick Blair as trustee under the terms of said last will, and that your orators have accepted the trust imposed upon them by said last will, and have been and are now acting as trustees of the residuary estate of the said decedent under said last will.

3. That by the terms of said paragraph fourteenth of said last will it was provided that Sarah Maria Blair, the wife of the testator, was to receive one-half of the net income of the said trust estate, and Edward Tyler Blair, the son of the testator, was to receive the other one-half, and after the death of Sarah Maria Blair, the wife of the testator, Edward Tyler Blair, the said son, was to receive the whole of the net income of the said trust estate for and during the full term of his natural life.

4. That by the terms of Section H of said paragraph fourteenth of said last will the testator provided that after the death of the above mentioned life beneficiaries the trustees should distribute the trust estate "to the child or children of my said son and to descendants of any deceased child or children of his by right of representation share and share alike"; that this provision for the distribution of the trust estate becomes effective if any child or children or the descendants of any deceased child or children of the said Edward Tyler Blair, the said son of the testator, survive the life tenants, and that Edward Tyler Blair is the last survivor of said life tenants. That Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair, hereinafter named defendants herein, are the sole and only children of the said Edward Tyler Blair, and that said children and their descendants are the persons who will be entitled to said trust estate if they survive the said Edward Tyler Blair, and that these

remaindermen are the same persons to whom Edward Tyler Blair has assigned part of his interest in the said trust as hereinafter more fully set forth.

5. That Sarah Maria Blair, the wife of the testator, [fol. 55] died on or about the 13th day of March, 1923, and thereafter Edward Tyler Blair, the said son of the testator, became and was entitled to received the whole of the net income of the said trust estate for and during the full term of his natural life.

6. That paragraph twentieth of said last will of William Blair, deceased, provides:

"I do hereby declare and direct that the income from said trust fund and estate, which is herein ordered to be, from time to time as the same shall be received, paid to my said wife and to my said son and to his said wife and to their children and descendants of children in the cases aforesaid, shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity, while yet in the hands of said trustees, liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth."

7. That on or about April 2, 1923, the said Edward Tyler Blair, by an instrument in writing, assigned and transferred to his daughter, Lucy Blair Linn, for her life, an interest amounting to six thousand dollars ($6,000) for the remainder of the calendar year 1923 and nine thousand dollars ($9,000) in each calendar year thereafter in the net income which Edward Tyler Blair was entitled to receive during his lifetime from the trustees under the last will and testament of William Blair, and that a copy of said assignment is attached hereto and marked Exhibit B, and made a part of this bill.

8. That on the same date, to wit, April 2, 1923, Edward Tyler Blair notified your orators, the then trustees under the last will of William Blair, in writing, of said assignment to Lucy Blair Linn, and your orators, in their capacities as trustees, then and there accepted said assignment

and a copy of said notice and acceptance is attached hereto and marked Exhibit C, and made a part of this bill.

9. That on the same date, to wit, April 2, 1923, Edward Tyler Blair likewise assigned and transferred to his daugh-
[fol. 56] ter, Edith Blair, an interest amounting to nine thousand dollars ($9,000) in each calendar year (including the remainder of the calendar year 1923) in the net income which Edward Tyler Blair was entitled to receive from your orators, and likewise further assigned and transferred to Edward Seymour Blair, his son, an interest amounting to six thousand dollars ($6,000) in each calendar year (including the remainder of the calendar year 1923) in the net income which Edward Tyler Blair was entitled to receive during his life from your orators. That on September 1, 1924, Edward Tyler Blair likewise assigned and transferred to his daughters, Edith Blair and Lucy Blair Linn, and to his son Edward Seymour Blair, interests amounting to two hundred fifty dollars ($250) per month in each calendar year (including the remainder of the calendar year 1924) in the net income which Edward Tyler Blair was entitled to receive from your orators. That on, to wit, January 2, 1925, Edward Tyler Blair likewise assigned and transferred to his son Edward Seymour Blair an interest amounting to five hundred dollars ($500) per month, and to his son William McCormick Blair an interest amounting to four thousand dollars ($4,000) per year, in the net income which Edward Tyler Blair was entitled to receive from your orators. That on, to wit, May 1, 1925, Edward Tyler Blair likewise assigned and transferred to his daughter Edith Blair an interest amounting to two hundred fifty dollars ($250) per month in each calendar year (including the remainder of the calendar year 1925) in the net income which Edward Tyler Blair was entitled to receive from your orators. That on, to wit, December 1, 1925, Edward Tyler Blair likewise assigned and transferred to his daughter Lucy Blair Linn an interest amounting to five hundred dollars ($500) per month in each calendar year (including the remainder of the calendar year 1925) in the net income which Edward Tyler Blair was entitled to receive from your orators. That on, to wit, January 2, 1926, said Edward Tyler Blair likewise assigned and transferred
[fol. 57] to his son William McCormick Blair an interest

amounting to two thousand dollars ($2,000) in each calendar year in the net income which Edward Tyler Blair was entitled to receive from your orators. That on, to wit, December 20, 1929, said Edward Tyler Blair likewise assigned and transferred to his daughter Edith Blair an interest amounting to two hundred fifty dollars ($250) per month in each calendar year in the net income which Edward Tyler Blair was entitled to receive from your orators. That all of said assignments in this paragraph referred to were in all respects identical to the aforesaid assignment to Lucy Blair Linn identified herein and attached hereto as Exhibit B except as to their respective dates and except as to the amount of the interest assigned, (which in each case has been described in this paragraph).

10. That on, to wit, the respective dates borne by the assignments and transfers referred to in paragraph 9 hereof, Edward Tyler Blair likewise notified your orators, the then trustees under the last will and testament of William Blair, in writing, of said assignments, and your orators in writing then and there accepted said assignments, and said notices and acceptances, except as to their respective dates, were identical to the notices and acceptances given with respect to the assignment of Lucy Blair Linn, and identified and attached hereto as Exhibit C, except as to the amount of the interest assigned, which in each case has heretofore been described in this bill.

11. That since the execution of said assignments your orators have paid over to Lucy Blair Linn, Edith Blair, William McCormick Blair, and Edward Seymour Blair part of the net income of the trust estate pursuant to said assignments, and have at all times recognized the validity of said assignments, and said assignees have at all times and do now demand that your orators pay to said assignees part of the net income of the trust estate pursuant to the terms of said assignments.

12. That in certain proceedings involving a dispute concerning income taxes for the year 1923 between the Commissioner of Internal Revenue of the United States, as petitioner, and Edward Tyler Blair, as respondent, the [fol. 58] United States Circuit Court of Appeals for the Seventh Circuit held on June 23, 1932, that said assignments of April 2, 1923, were void as a matter of law, and

that the writ of certiorari to review said decision has been denied by the Supreme Court of the United States. The proceeding in which the United States Circuit Court of Appeals for the Seventh Circuit held the assignments of April 2, 1923, void, arose as follows: Your orators have from time to time filed with the Collector of Internal Revenue in Chicago reports of the income of said trust in the manner required by the various Revenue Laws of the United States. In said reports, your orators have reported the amounts of income distributed to Edward Tyler Blair and to Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair by virtue of said assignments.

12a. That the Commissioner of Internal Revenue, in auditing the reports of your orators and the income tax returns of Edward Tyler Blair, ruled that all of the income of said trust was distributable to Edward Tyler Blair, notwithstanding said assignments, and that the distribution shown on the reports of your orators was incorrect, and that Edward Tyler Blair should have paid an income tax on the full amount of the income of said trust.

12b. That said Edward Tyler Blair appealed from this ruling to the United States Board of Tax Appeals, which board reversed the ruling of the Commissioner. From this decision the Commissioner appealed to the United States Circuit Court of Appeals, for the Seventh Circuit, which reversed the Board of Tax Appeals and affirmed the ruling of the Commissioner of Internal Revenue. In so doing, the court held that the interest of Edward Tyler Blair, under the will of William Blair, could not be assigned in whole or in part by Edward Tyler Blair, and therefore all the income of the trust is distributable to Edward Tyler Blair, notwithstanding said assignments.

12c. That prior to the said decision, and at the time of the execution and delivery of the assignment first above mentioned, your orators were advised by counsel that the proper construction of the will of William Blair, under the [fol. 59] law of Illinois, was that the interest of Edward Tyler Blair could be assigned in whole or in part by him, and pursuant to this advice your orators accepted said assignments and distributed income to the assignees as aforesaid.

12d. That your orators are now advised by counsel that the said decision of the United States Circuit Court of Appeals raises a serious doubt as to the validity of said assignments under the law of Illinois, and that, further, the said decision may be binding on your orators as trustees as aforesaid, and that they may be personally liable if they distribute the income of the trust to persons other than Edward Tyler Blair in accordance with the provisions of said assignments, and that accordingly the rights of the situation demand that your orators as trustees refuse to make payments under the said assignments to the persons there named as assignees. On the other hand, the said Lucy Blair Linn, Edward Seymour Blair, Edith Blair, and William McCormick Blair contend that neither your orators as trustees nor themselves, or any of them, were parties to the proceedings before the Circuit Court of Appeals, and that they are not bound by its decision, and on the contrary, that the said assignments are valid and enforceable and that your orators are obliged to pay to them the income specified in said assignments, and they demand said payments be made to them and not to Edward Tyler Blair.

12e. That the United States Circuit Court of Appeals, Seventh Circuit, purported to construe said will according to the law of Illinois, and relied principally upon the decisions of the Supreme Court of Illinois in

Bennett v. Bennett, 217 Ill. 434;
Wagner v. Wagner, 244 Ill. 401;
Wallace v. Foxwell, 250 Ill. 616;
Hopkinson v. Swain, 284 Ill. 11.

Said United States Circuit Court of Appeals, Seventh Circuit, held "that the trust created by the will in the instant case is a spendthrift trust and that respondent (Edward Tyler Blair) had no right to alienate it".

12f. That the beneficiaries under said assignments claim that certain decisions of the Supreme Court of Illinois [fol. 60] show that a restraint on alienation cannot be implied and that therefore a restraint on voluntary alienation by Edward Tyler Blair cannot be implied from the express restraint on involuntary alienation contained in said paragraph fourteenth of said will.

12g. That your orators are informed that Edward Tyler Blair relied on the cases of

Binns v. La Forge, 191 Ill. 598, and
Bryan v. Howland, 98 Ill. 625,

and on two decisions in Massachusetts, directly on the question, namely

Ames v. Clarke, 108 Mass. 573, and
Boston Safety Deposit Trust Co. v. Luke, 108 N. E. 64.

12h. That your orators are informed and believe that if they follow the decision of the United States Circuit Court of Appeals and refuse to distribute to the assignees the part of the income of the trust assigned to them, but distribute all the income to Edward Tyler Blair, your orators will be subjected to a multiplicity of suits by said assignees demanding payment in accordance with the assignments.

13. That the citizenship of William Blair, the testator, and all of the parties hereto, and the location of the trust property and creation and administration of the said trust, are all in the State of Illinois, and that in view of the doubts and questions in connection with the assignment by Edward Tyler Blair of his interest in the income in said trust estate, where the instrument creating said trust imposes restrictions as to the subjection of the income thereof to payment of debts of the beneficiary, your orators are embarrassed in connection with the proper management of said trust, and it is essential to the interest of the beneficiary named in said trust and said trust estate and the assignees of said beneficiary to have all such doubts and questions removed and set at rest.

[fol. 61] 14. That each one of said assignments provides that it shall cease upon the death of Edward Tyler Blair or of the assignee named in each assignment; that paragraph fourteenth of said last will of William Blair, deceased, provides for the disposition of the trust after the death of Edward Tyler Blair and upon certain contingencies to certain parties therein named, but that none of said parties have any interest in the validity of said assignments or in this proceeding, and that their interests will not and cannot be affected by this proceeding.

15. That in addition to your orators, the following named persons, to wit, Lucy Blair Linn, Edith Blair, Edward Seymour Blair, William McCormick Blair, and Edward Tyler Blair, are the only persons now in being who are or may be interested in the validity of said assignments, and that the foregoing persons, together with your orators as the residuary trustees named in said will, in equity stand for and represent all persons who do or may have any interest in the validity of said assignments.

Forasmuch, therefore, as your orators are without remedy in the premises except in a court of equity, your orators pray that the said Lucy Blair Linn, Edith Blair, Edward Seymour Blair, William McCormick Blair, and Edward Tyler Blair, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that a decree may be entered construing the said will of William Blair, deceased, as to the power of the beneficiary of said trust estate voluntarily to convey and assign a part of his beneficial and equitable interest in said trust and thus alienate accruing income in the hands of your orators, and as to the validity of said assignments, and as to whether your orators should pay to said assignees part of the net income of the trust estate pursuant to said assignments, and that your orators may have such other and further or different relief as shall be agreeable to equity.

May it please Your Honors to grant the writ of summons in chancery directed to the Sheriff of the County of [fols. 62-71] Cook, demanding that he summon the defendants, Lucy Blair Linn, Edith Blair, Edward Seymour Blair, William McCormick Blair, and Edward Tyler Blair to appear before the said court on the first day of the next April term thereof to be held at the Court House in Chicago, Illinois, in the County of Cook aforesaid, and then and there to answer to this bill.

Exhibit A omitted. See exhibit 1, printed side page 32, ante.

[fol. 72] Exhibit B omitted. See exhibit 2, printed side page 42, ante.

[fol. 73] Exhibit "C" omitted. See exhibit 13, printed side page 51, ante.

[fol. 74] Appearance of Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, individually—filed June 6, 1933.

Answer of Defendants Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, Individually—Filed June 6, 1933

(1) Admits the facts alleged in the bill of complaint.

(2) Admits that the decision of the Circuit Court of Appeals raises a doubt as to the validity of the assignments and said doubt requires a construction of the will of William Blair.

(3) Alleges that the will of William Blair does not constitute a restraint on the power of voluntary alienation by Edward Tyler Blair of his interest in the trust estate.

Defendants join in requesting a construction of the will.

Alias summons and return showing service on Edward Tyler Blair on June 9, 1933.

Order entered September 20, 1933, defaulting Edward [fol. 75] Tyler Blair and ordering that the bill of complaint be taken as confessed against him.

Decree entered January 16, 1934, as follows:

This cause came on to be h-ard on the bill of complaint of Edward Tyler Blair and William McCormick Blair as trustees under the last will and testament of William Blair, deceased, and on the answer thereto of Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, individually.

And the court, taking all of the facts alleged in said bill of complaint and admitted by said answer to be true, and having heard the arguments of counsel and being fully advised in the premises now finds as follows:

1. Edward Tyler Blair, individually, was duly served with summons herein at least 20 days before the first Monday of January, 1934, and Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, individually, have entered their appearance herein and the court has jurisdiction of all the parties hereto.

2. Edward Tyler Blair, individually, has not entered any appearance and has not filed any exception, demurrer, plea or answer to the bill of complaint herein and was by order of this court entered September 20, 1933, duly defaulted and the cause taken as confessed against him.

3. The complainants, Edward Tyler Blair and William McCormick Blair, are the duly appointed and acting trustees under the last will and testament of William Blair who died a resident of Cook County, Illinois, on or about the 10th day of May, 1899. Said trustees are both residents of Cook County, Illinois, and the court has jurisdiction of the trust created by said will.

4. Said William Blair by his said will created a trust estate of which said Edward Tyler Blair is one of the beneficiaries and on the death of his mother on or about March 13, 1923, he became entitled to the whole of the net income for the remainder of his natural life.

5. On or about April 2, 1923, said Edward Tyler Blair, by instruments in writing assigned to said Lucy Blair Linn, [fol. 76] Edith Blair and Edward Seymour Blair, three of his children, part of his life interest in said trust estate and by similar instruments in writing dated September 1, 1924, January 2, 1925, May 1, 1925, December 1, 1925, December 20, 1925, and January 2, 1926, he assigned additional parts of his life interest in said trust to said children and to William McCormick Blair, his other child. Notice of each of said assignments was duly given to the trustees, was accepted by them, and the proper part of the income was thereafter paid by the trustees from time to time directly to said children of Edward Tyler Blair.

6. Said trustees at that time believed that under the proper construction of the will of said William Blair, said Edward Tyler Blair could validly assign part of his interest in said trust estate to his said children.

7. On or about June 23, 1932, the United States Circuit Court of Appeals for the Seventh Circuit, in a case relating to the income tax of said Edward Tyler Blair, decided that his interest in said trust estate was not assignable and therefore said assignments were invalid.

8. Neither the trustees of said trust estate nor said assignees were parties to said case in the United States Circuit Court of Appeals for the Seventh Circuit and they were not bound by said decision. Said decision raised a reasonable doubt in the minds of said trustees as to the proper distribution of the income of said trust estate as between said Edward Tyler Blair and his said assignees and they properly filed their bill of complaint herein praying

this court to construe said will of William Blair as to the power of said Edward Tyler Blair voluntarily to convey and assign a part of his beneficial and equitable interest in said trust estate to his said children and as to the validity of said assignments to them.

9. This court has jurisdiction to construe said will as prayed in said bill of complaint and to determine the validity of said assignments and has jurisdiction of the subject matter hereof.

10. Paragraph Twenty of said will of William Blair provides:

"Twenty: I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time as the same shall be received, paid to my said wife and to my said son and to his said wife and [fol. 77] to their children and descendants of children in the cases aforesaid, shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth."

11. Said Paragraph Twenty of said will of William Blair, when properly construed, is an absolute restraint on the right of said Edward Tyler Blair to assign his interest or any part thereof prior to the time that the income of said trust estate is distributed.

12. The assignments hereinbefore described are assignments of a part of the interest of said Edward Tyler Blair in said trust estate, including income prior to the time that it is distributed and said assignments are therefore invalid.

The court being now fully advised in the premises, It Is Ordered, Adjudged and Decreed by the Court:

First. Paragraph Twenty of the will of William Blair, when properly construed, is an absolute restraint on the right of said Edward Tyler Blair to assign his interest or any part thereof prior to the time that the income of said trust estate is distributed.

Second. The assignments by Edward Tyler Blair to Lucy Blair Linn, dated April 2, 1923, September 1, 1924, and December 1, 1925, to Edith Blair dated April 2, 1923, September 1, 1924, May 1, 1925, and December 20, 1925, to Edward Seymour Blair dated April 2, 1923, September 1, 1924, and January 2, 1925, and to William McCormick Blair dated January 2, 1925, and January 2, 1926, are all invalid.

The court reserves jurisdiction of this cause and of the parties thereto for the purpose of determining the allowances to be made out of said trust estate to the several parties for their costs, disbursements and solicitors' fees in this proceeding.

Denis E. Sullivan, Judge.

Enter:
January 16, 1934.

[fol. 78] Notice of appeal—filed January 16, 1934.
Notice of appearance.
Notice of appearance.
Præcipe for trial court record.
Certificate of Clerk of Superior Court of Cook County—January 17, 1934.

Assignment of Errors

Now come the appellants, Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, by Wilson & McIlvaine, their attorneys, and show to the court that in the proceedings upon said cause in the Superior Court of Cook County, there was and is manifest error as follows:

(1) The court erred in its construction of the will of William Blair, deceased.

(2) The court erred in finding and also in decreeing that paragraph twenty of said will is an absolute restraint on the right of Edward Tyler Blair to assign his interest, or, or any part thereof, prior to the time that the income of said trust estate is distributed.

(3) The court erred in finding and also in decreeing that the assignments by Edward Tyler Blair to Lucy Blair Linn, dated April 2, 1923, September 1, 1924, and December 1, 1925, to Edith Blair dated April 2, 1923, September 1, 1924, May 1, 1925, and December 20, 1925, to Edward Seymour Blair dated April 2, 1923, September 1, 1924, and

January 2, 1925, and to William McCormick Blair dated January 2, 1925, and January 2, 1926, are all invalid.

(4) The decree of the court below is contrary to the law.

Wilson & McIlvaine, Attorneys for Appellants.

[fol. 79] PETITIONER'S EXHIBIT 15

U. S. Board of Tax Appeals

Docket 42313—63741

Admitted in Evidence May 2, 1934

At a Term of the Appellate Court, Begun and held at Chicago, on Tuesday, the Sixth day of February in the year of our Lord One Thousand Nine Hundred and Thirty-four within and for the First District of the State of Illinois.

Present: Hon. David F. Matchett Presiding Justice. William H. McSurely Justice. John M. O'Connor Justice.

Sheldon W. Govier, Clerk. William D. Meyering, Sheriff.

Be It Remembered, That on the 5th day of March A. D. 1934, there was filed in the office of the Clerk of said Court, an opinion of said Court, in words and figures, following to-wit:

No. 37406

Appeal from Cook Superior

Error to ——

EDWARD TYLER BLAIR and WILLIAM MCCORMICK BLAIR, as Trustees under the Last Will and Testament of William Blair, Deceased, Appellees,

vs.

LUCY BLAIR LINN, EDITH BLAIR, EDWARD SEYMOUR BLAIR, William McCormick Blair and Edward Tyler Blair, Appellants

• • • (Caption) • • • •

Mr. Justice MCSURELY delivered the opinion of the Court.

This appeal presents the question whether Edward Tyler Blair, a defendant, could assign a portion of the trust in-

come devised to him by his father's will before he received it. The trustees filed their bill asking the court to construe [fol. 80] the will in this respect. The Superior court held that the law did not permit Mr. Blair to do this, and the defendants appeal to this court.

William Blair, deceased, by his will created a trust estate, naming as trustees his nephew, Chauncey Blair (succeeded by complainant William McCormick Blair) and his son, Edward Tyler Blair; by the terms of the trust the wife of the testator was to receive one-half of the net income of the trust estate during her life, and his son, Edward Tyler Blair was to receive the other half during his life; after the death of the testator's wife the son was to receive the whole income of the trust during his life; at his death the corpus of the trust to be distributed among his children.

Testator's wife subsequently died, and thereafter Mr. Blair executed certain written assignments of portions of his income to his children, aggregating approximately $60,000 a year; the trustees accepted these assignments and accordingly from time to time paid over the portions of the income so assigned to his children.

The Commissioner of Internal Revenue sought to have Mr. Blair pay taxes on the entire amount of the income from his father's estate, regardless of the fact that approximately one-half of it had been assigned to his children. The Board of Tax Appeals recognized these assignments and held that Mr. Blair should pay an income tax only on the amount actually received by him. The Commissioner of Internal Revenue appealed to the Circuit court of Appeals for the Seventh circuit, which court reversed the order of the Board, holding that Mr. Blair could not lawfully make the assignments to his children and that he should be taxed upon the entire income of his father's estate. Commissioner of Internal Revenue v. Blair, 60 Fed. (2nd) 340. The children, who are the assignees from Mr. Blair and also the remaindermen after his life estate, were not before that court. The Federal court did not adjudicate the property rights but decided only the amount of the income of Mr. Blair which should be taxed. That court recognized that those rights were to be determined by the courts of Illinois, citing Spindle v. Shreve, 111 U. S. 542. In the recent case of Freuler v. Helvering, 54 Sup. Ct. Rep. 308, the Supreme court holds that the decision of the state court determining

the property rights of the taxpayer is conclusive in determining his federal income tax although the Federal court in the income tax case had reached a different result as to the same property rights. It follows, therefore, that al- [fol. 81] though the Federal court has construed the instant will, and certiorari to the Supreme court of the United States has been denied, yet this court, while giving weight to the opinion of the Federal court, must use its own judgment in determining whether the assignments in question are permissible under the law of Illinois.

The particular paragraph of the will which the Federal court held prohibits these assignments is as follows:

"I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time, as the same shall be received, paid to my said wife and to my said son and to his said wife and to their children and descendants of children in the cases aforesaid, shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth."

As a general proposition, restraints on alienation are looked upon with disfavor by the Illinois courts. Davis v. Hutchinson, 282 Ill. 523; Merchants Loan & Trust Co. v. Patterson, 308 Ill. 319. However, there are Illinois cases which sustain restraints on alienation where the same is clearly expressed in the document. In Steib v. Whitehead, 111 Ill. 247, the restriction was that the income should be paid to the daughter of the testator "in person, and not upon any written or verbal order, nor upon any assignment or transfer" by her. In Congress Hotel v. Martin, 312 Ill. 318, the will specifically provided that the income should be paid only into the hands of the beneficiaries, in person, "and not upon any written or verbal order, nor upon any assignment or transfer thereof by said beneficiaries, or by operation of law." The following cases were also cited by the Federal court, but none of them involved the question of alienation by a beneficiary. Bennett v. Bennett, 217

Ill.. 434, involved an ordinary trust fund from which the beneficiary was to receive only the income; he filed a bill in chancery alleging that he was in debt and needed the corpus of the trust. The court dismissed his bill, saying that the purpose of the trust had not been completed. Wal- [fol. 82] lace v. Foxwell, 230 Ill. 616, involved the question whether the trustee under the will should pay the income to the son of the testator and his wife in equal shares, or all of it to the wife. The court found there was no vested interest in the son. In Jones v. Harrison, 7 Fed. (2nd) 461, it was held that the interest of the beneficiary did not pass to the trustee in bankruptcy. In Hartley v. Heirs of Wyatt, 281 Ill. 321, the beneficiary under a will persuaded the trustee to convey a farm to him. The court held the trust was active and the trustee had no power to do this. So also in King v. King, 163 Ill., 273, Wagner v. Wagner, 244 Ill. 101, and Leary v. Kerber, 255 Ill. 433, respectively, the question of alienation by a beneficiary was not involved.

The Federal court seems to have relied largely upon the decision in Hopkinson v. Swain, 284 Ill. 11. There the trustees were ordered to pay the income to the beneficiary, a daughter, "directly, free and exempt from the power and control of any husband and from liabilities for any debts or engagements." This restriction clearly evidenced the intention of the testator that the husband of his daughter should have no control or power over her income; however, the daughter joined with her husband in making an assignment of her interest. The court held it invalid because of this restrictive provision. In other words, the assignment of the husband and daughter was precisely what the testator intended to prevent. The instant case is quite different. Here the testator intended that his grandchildren should have the benefit of the income from his estate upon the death of his son. The assignments are consistent with the intention of the testator as expressed in the will.

Moreover, the will in the Hopkinson case, as noted in the opinion (page 20) had already been construed by the Supreme court of Pennsylvania, the state where it was made, as creating a spendthrift trust, limiting the rights of the beneficiaries. Ewalt v. Davenhill et al., 257 Pa. St. 365.

While our Supreme court has decided that restraints on the rights of creditors will be given effect, and also, that an expressed restraint on alienation will be enforced, in no

case has it been held that an implied restraint will be enforced.

In Bisna v. LaForge, 191 Ill. 598, the life beneficiary assigned her interest as security for her debt; a creditor sought to realize on this and was met with the claim that the assignment was invalid; there was no language in the [fol. 83] will restricting alienation but the beneficiary claimed that the statute, Chap. 22, sec. 49 (Cahill) denied to creditors of a cestui que trust the right to seize income in the hands of a trustee, hence her assignment to a creditor was void. The Supreme court held that while a creditor could not seize the income, her voluntary alienation to a creditor was valid, saying that the statute "is not designed to protect the trust fund from the voluntary alienation of the cestui que trust, and there being no restriction in this will, there is no reason why Gertrude M. Talbot (the life beneficiary) might not in equity assign said income, or a part thereof, to James Ryan (the creditor) as security for a debt which she owed him."

In O'Hare v. Johnston, 273 Ill. 458, the court had before it the question whether a certain trust was a spendthrift trust, with restraint upon alienation by the beneficiary, a son, of his interest in the trust. The court said that there was no language in the will to that effect, and, citing the fact that the testator in the same will had given the son large sums of money and had appointed him one of his executors, said that the testator would hardly have done this if he had considered the son a person not to be trusted with business matters, and refused to construe the trust document as a restraint upon alienation.

William Blair had complete confidence in the business ability of his son, as he named him as one of the executors and one of the trustees. All the circumstances indicate that William Blair did not intend to create a spendthrift trust but only to protect the trust property from involuntary transfers.

Kales on Fu-ure Interests, para. 742, page 861, says:

"A mere trusteeship, even though it is for the protection of the beneficiaries, ought not, as a matter of taste, if for no other reason, to be called a 'spendthrift trust.' Only where there is added to the trusteeship express restraints on alienation is it justifiable to call the creation a spend-

thrift trust. Whether restraints on alienation, voluntary or involuntary, or both, are added ought to be determined by the application of the usual principles of construction to the language used. If the restraint is not expressed, no amount of extrinsic evidence or speculation and conjecture as to the testator's or settlor's inducement ought to be permitted to inject it into the will or settlement."

[fol. 84] In Ames v. Clark, 106 Mass. 573, the will contained a provision that no part of the bequest should be liable for the debts of the beneficiary; the beneficiary assigned his bequest to another; the validity of this assignment was questioned, but the court said: "The proviso that it should not be liable for his (the beneficiary's) debts while in the hands of the executor did not give the executor any authority to control his disposition of it nor deprive him of the right to dispose of it by his voluntary act."

From all these decisions we draw the conclusion that the Illinois courts view with disfavor restrictions on alienation; that while restrictions specifically expressed will be enforced, if the restraint is not expressed no speculation or conjecture should be permitted to inject it into the will.

It is obvious that decisions in other cases involving different language can give us only general rules. "Cases on wills may serve to guide us with respect to general rules in the construction of devises in wills, but unless a case cited be in every respect directly in point and agree in every circumstance with that in question, it will have little or no weight with the courts, who always look upon the intention of the testator as the polar star to direct them in the construction of wills." O'Hare v. Johnston, supra.

The words said to prohibit the assignments are, that the income should be paid to the testator's wife and to his son "directly upon their separate order and receipt therefor, for their sole and separate uses." There is force in the suggestion that the word "order" means something other than a payment into the hands of the testator's wife and son. The word "order" means a writing "requiring the party to whom it is addressed to deliver property of the person making the order to some one therein described." 3 Bouvier's Law Dictionary, Rawle's Third Revision, 2423. The trustees were required to pay the income to the life beneficiaries without any order from them. That mandate

was in the will itself. To pay the income to someone other than a beneficiary would require an order on the trustees signed by the beneficiary. The language of the will implies the very thing that has been done by the assignments.

It is important to note that the assignments to Mr. Blair's children were to the same persons who were, under the will, remaindermen, and who, in all probability, would receive the trust property on the death of their father. The effect of the assignments is merely to accelerate the gifts of the [fol. 85] grandfather, the testator, to his grandchildren. England v. England, 223 Ill. App. 549, and Tuttle v. Gunderson, 254 Ill. App. 352, involved cases where the will contained a clearly expressed restraint on voluntary alienation, but it was held in each case the testator did not intend to exclude from participating in the income the members of the family of the beneficiary.

If the testator had intended to restrict voluntary alienation by his son, this could have been readily accomplished by the use of a very few words. That he did not use such words is strong evidence that he did not so intend. Words, even of doubtful meaning, should not be so construed as to inject an intention into the will manifestly contrary to that of the testator.

For the reasons indicated, we held that the questioned assignments are valid, and the decree of the lower court is reversed and the cause remanded, with directions to enter a decree consistent with what is said in this opinion.

Reversed and remanded with directions.

Matchett, P. J., concurs.

O'Connor, J., dissents. (See next page.)

37406 Mr. Justice O'Connor Dissenting:

In Hopkinson v. Swain, 264 Ill., 11, the court said (p. 23): "There could be no such exemption from liability for debt if the beneficiary could convey or assign the income, for if she could do so it could also be seized in execution or attachment or reached by a creditor's bill."

In my opinion the Hopkinson case is not distinguishable from the case at bar and therefore the decree of the Superior court should be affirmed.

I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois and keeper of the records, files and seal thereof, Do Hereby Certify

That the foregoing is a true copy of the opinion of the said Appellate Court in said cause, as appears of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 4th day of April in the year of our Lord one thousand nine hundred and Thirty-four.

Sheldon W. Govier, Clerk of the Appellate Court of the First District, Illinois.

[fol. 86] Appellate Court, First District

Petitioner's Exhibit 16

U. S. Board of Tax Appeals

Docket 42313—63741

Admitted in Evidence May 2, 1934

At a Term of the Appellate Court, Begun and Held at Chicago, on Tuesday, the Sixth day of February, in the year of our Lord, one thousand nine hundred and Thirty-four, within and for the First District of the State of Illinois:

Present: The Honorable F. Matchett Presiding Justice. William H. McSurely Justice. John M. O'Connor Justice.

Sheldon W. Govier, Clerk. William D. Meyering, Sheriff.

No. 37406

Edward Tyler Blair and William McCormick Blair, as Trustees under the Last Will and Testament of William Blair, Deceased, Appellees,

vs.

Lucy Blair Linn, Edith Blair, Edward Seymour Blair, William McCormick Blair and Edward Tyler Blair, Appellants

Error to ——

Appeal From Cook Superior

Monday March 5, A. D. 1934.

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently ad-

vised of and concerning the premises, are of the opinion that in the Record and proceedings aforesaid, and in the [fol. 87] rendition of the Decree aforesaid, there is Manifest Error: Therefore, it is considered by the Court that, for that Error, and others in the Record and proceedings aforesaid, the Decree of the Superior Court of Cook County, in this behalf, rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be Remanded to the Superior Court of Cook County with directions to said Superior Court to enter a decree consistent with the views expressed in the opinion of this Court this day filed herein. And it is further considered by the Court that the said Appellants recover of and from the said Appellees their costs, by them in this behalf expended, to be taxed, and to be paid in due course of Administration of said Trusteeship. From which order and judgment Mr. Justice O'Connor Dissents.

I, Sheldon W. Govier, Clerk of the Appellate Court of the First District of the State of Illinois, Do Hereby Certify that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 4th day of April in the year of our Lord one thousand nine hundred and Thirty-four.

Sheldon W. Govier, Clerk of the Appellate Court of the First District.

APPELLATE COURT, FIRST DISTRICT

——

vs.

——

Order Reversing and Remanding

Placita. —— ——, Attorney.

Superior Court of Cook County

(Decree)

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Pleas, before the Honorable Denis E. Sullivan one of the Judges of the Superior Court of Cook County, in the State

[fol. 88] of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday, being the Fifth day of March, in the year of our Lord one thousand nine hundred and thirty Four, and of the Independence of the United States of America, the one hundred and fifty Eighth.

Present: The Honorable Denis E. Sullivan, Judge of the Superior Court of Cook County. Thomas J. Courtney, State's Attorney. William D. Meyering, Sheriff of Cook County.

Attest: Frank V. Zintak, Clerk.

Be it remembered that heretofore, to-wit: on the 31st day of March in the year of our Lord one thousand nine hundred and Thirty Four, the same being one of the days of the March Term of the Superior Court of Cook County the following among other proceedings were had in said Court and entered of record, to-wit:

Petitioner's Exhibit 17

In the Superior Court of Cook County

* * * (Caption) * * *

Decree

This cause came on to be heard on the bill of complaint of Edward Tyler Blair and William McCormick Blair as trustees under the last will and testament of William Blair, deceased, and on the answer thereto of Lucy Blair Linn, Edith Blair, Edward Seymour Blair and William McCormick Blair, individually.

And the court, taking all of the facts alleged in said bill of complaint and admitted by said answer to be true, and having heard the arguments of counsel and being fully advised in the premises now finds as follows:

1. Edward Tyler Blair, individually, was duly served with summons herein at least 20 days before the first Monday of January, 1934, and Lucy Blair Linn, Edith Blair, [fol. 89] Edward Seymour Blair and William McCormick Blair, individually, have entered their appearance herein and the court has jurisdiction of all the parties hereto.

2. Edward Tyler Blair, individually, has not entered any appearance and has not yet filed any exception, demurrer, plea or answer to the bill of complaint herein and was by order of this court entered September 20, 1933, duly defaulted and the cause taken as confessed against him.

3. The complainants, Edward Tyler Blair and William McCormick Blair, are the duly appointed and acting trustees under the last will and testament of William Blair who died a resident of Cook County, Illinois, on or about the 10th day of May, 1899. Said trustees are both residents of Cook County, Illinois, and the court has jurisdiction of the trust created by said will.

4. Said William Blair by his said will created a trust estate of which said Edward Tyler Blair is one of the beneficiaries and on the death of his mother on or about March 13, 1923, he became entitled to the whole of the net income for the remainder of his natural life.

5. On or about April 2, 1923, said Edward Tyler Blair, by instruments in writing assigned to said Lucy Blair Linn, Edith Blair and Edward Seymour Blair, three of his children, part of his life interest in said trust estate and by similar instruments in writing dated September 1, 1924, January 2, 1925, May 1, 1925, December 1, 1925, December 20, 1925, and January 2, 1926, he assigned additional parts of his life interest in said trust to said children and to William McCormick Blair, his other child. Notice of each of said assignments was duly given to the trustees, was accepted by them, and the proper part of the income was thereafter paid by the trustees from time to time directly to said children of Edward Tyler Blair.

6. Said trustees at that time believed that under the proper construction of the will of said William Blair, said Edward Tyler Blair could validly assign part of his interest in said trust estate to his said children.

7. On or about June 23, 1932, the United States Circuit Court of Appeals for the Seventh Circuit, in a case relating to the income tax of said Edward Tyler Blair, decided that his interest in said trust estate was not assignable and therefore said assignments were invalid.

8. Neither the trustees of said trust estate nor said assignees were parties to said case in the United States Cir-

cuit Court of Appeals for the Seventh Circuit and they were [fol. 90] not bound by said decision. Said decision raised a reasonable doubt in the mind of said trustees as to the proper distribution of the income of said trust estate as between said Edward Tyler Blair and his said assignees and they properly filed their bill of complaint herein praying this court to construe said will of William Blair as to the power of said Edward Tyler Blair voluntarily to convey and assign a part of his beneficial and equitable interest in said trust estate to his said children and as to the validity of said assignments to them.

9. This court has jurisdiction to construe said will as prayed in said bill of complaint and to determine the validity of said assignments and has jurisdiction of the subject matter hereof.

10. Paragraph Twenty of said will of William Blair provides:

"Twenty: I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time as the same shall be received, paid to my said wife and to my said son and to his said wife and to their children and descendants of children in the cases aforesaid, shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth."

11. Neither said Paragraph Twenty nor any other part of said will of William Blair, when properly construed, constitutes a restraint on the right of said Edward Tyler Blair to voluntarily assign his interest in said trust estate or any part thereof.

12. The assignments hereinbefore described are voluntary assignments of a part of the interest of said Edward Tyler Blair in said trust estate. Said assignments are valid.

The court being now fully advised in the premises, It is Ordered, Adjudged and Decreed by the Court:

First. Paragraph Twenty of the will of William Blair, when properly construed, is not a restraint on the right of said Edward Tyler Blair to voluntarily assign his interest in said trust estate or any part thereof.

Second. The assignments by Edward Tyler Blair to Lucy Blair Linn, dated April 2, 1923, September 1, 1924, and December 1, 1925, to Edith Blair dated April 2, 1923, Sep-
[fol. 91] tember 1, 1924, May 1, 1925, and December 20, 1925, to Edward Seymour Blair dated April 2, 1923, September 1, 1924, and January 2, 1925, and to William McCormick Blair dated January 2, 1925, and January 2, 1926, are all valid.

The court reserves jurisdiction of this cause and of the parties thereto for the purpose of determining the allowances to be made out of said trust estate to the several parties for their costs, disbursements and solicitors' fees in this proceeding.

Enter:

Denis E. Sullivan, *Judge.*

March 31, 1934.

STATE OF ILLINOIS,
County of Cook, ss:

I, Frank V. Zintak, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree made and entered of record in said court in a certain cause lately pending in said Court on the Chancery side thereof, wherein Edw. T. Blair & William Blair as Trustees etc. were complainants and Lucy Blair Linn, et al were defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 4th day of April A. D. 1934.

Frank V. Zintak, *Clerk.*

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 42313, 63741. Promulgated January 31, 1935

EDWARD T. BLAIR, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Findings of Fact and Opinion—Filed January 31, 1935.

1. In Commissioner v. Blair, 60 Fed. (2d) 340, the United States Circuit Court of Appeals for the Seventh Circuit reversed the decision of this Board in Edward T. Blair, 18 B. T. A. 69, a proceeding between the same parties as are involved in the instant proceedings but which involved the redetermination of the petitioner's income tax liability for the year 1923, and held that a certain trust created by the [fol. 92] will of the petitioner's father was a spendthrift trust and hence certain assignments made by the petitioner in 1923, of portions of the income to which he was entitled for life under the testamentary trust, were invalid under the law of Illinois and did not operate to relieve the petitioner of tax liability upon the amounts of income covered by the assignments. Subsequent to the decision of the United States Circuit Court of Appeals for the Seventh Circuit, the Appellate Court of Illinois, First District, a court of competent jurisdiction whose decision is binding upon the petitioner and his assignees, held, and pursuant to its holding the court of original jurisdiction of the state decreed, that the trust is not a spendthrift trust and that all the assignments made by the petitioner are valid. Held that in the instant proceedings, which involve the redetermination of the petitioner's tax liability for the years 1924, 1925, 1926, and 1929, the holding of the Appellate Court of Illinois and the resulting decree of the court of original jurisdiction that the trust in question is not a spendthrift trust and that all the assignments made by the petitioner are valid, are conclusive. Freuler v. Helvering, 29 U. S. 35. Held, further, that such assignments operated to transfer to the assignees the petitioner's right to receive income, and hence the petitioner is relieved of liability to pay tax upon the income received by the assignees under the assignments. Edward T. Blair, supra.

2. Held that, in computing the net income of the trust distributable to the petitioner, amounts expended by the trustees as commissions and legal fees in leasing certain properties belonging to the trust are not deductible in their entirety in the years in which expended, but are deductible pro rata over the terms of the leases.

C. F. Selfridge, Esq., and J. F. Dammann, Esq., for the petitioner.

Bruce A. Low, Esq., for the respondent.

These are proceedings, duly consolidated for hearing and opinion, for the redetermination of deficiencies in income taxes as follows:

Docket No.	Year involved	Deficiency
42313	1924	$7,642.52
42313	1925	10,399.94
42313	1926	12,876.36
63741	1929	14,533.58

[fol. 93] In Docket No. 42313 it is alleged that the respondent erred (1) in including in the income of the petitioner in the years 1924, 1925, and 1926 the respective amounts of $30,000, $65,356.89, and $58,434.96, which, it is alleged, were never received by petitioner or credited to him, but were in fact income of the trust estate created under the will of William Blair, father of this petitioner, which income was properly distributed by the trustees of the estate of William Blair to Edith Blair, Edward Seymour Blair, Lucy Blair Linn, and William McCormick Blair; and (2) in increasing the petitioner's income in the amount of $16,856.89 as a result of the disallowance of deductions by the trustees of the estate of Edward T. Blair [William Blair] for commissions and legal expenses paid in connection with two leases on real estate which constituted a part of the assets of the estate.

In Docket No. 63741 it is alleged that the respondent erred (1) in including as additional income of the petitioner from the William Blair trust the sum of $57,000 which was paid in 1929 by the trustees of the trust to children of the petitioner pursuant to assignments to such children of part of the petitioner's interest in the trust estate; (2) in increasing the net income of the William Blair trust and increasing the income of the petitioner as the life bene-

ficiary of such trust in the amount of $14,541.34 on account of the disallowance of certain deductions claimed as necessary expense in the operation of a certain building belonging to the trust located at 608 South Wabash Avenue, Chicago, Illinois, such expenditures being $5,580 paid as commission on April 30, 1929, to a real estate broker for services in connection with the consummation of a 10-year lease on the premises, and $10,000 paid for expenditures for repairing such building, a total of $15,580, of which the respondent allowed only $1,038.66, being the portion allocable to the eight months of the year 1929 during which the tenant occupied the premises; and (3) in not allowing the petitioner a deduction of an amount of $762.57, being a part of the sum of $17,619.46 paid out by the trustees in 1925 as commissions to real estate brokers for leases on trust property and legal fees in connection therewith, which amount was claimed by the trustees as a deduction on their return for the year 1925, the respondent holding that the amount should be spread over the period of the lease. This assignment of error is in the alternative; that is, in the event that the respondent's holding that the amount of $17,619.46 [fol. 94] should be spread over the period of the lease is sustained by the Board in Docket No. 42313.

These proceedings were submitted upon a stipulation of facts and certain exhibits, all of which we incorporate herein by reference.

Findings of Fact

The petitioner is a resident of Chicago, Illinois. His father, William Blair, was also a resident of Chicago, Illinois. The latter died May 10, 1899, leaving a last will and testament which was duly admitted to probate in the Probate Court of Cook County, Illinois. Such will provided, *inter alia,* for the transfer of all the deceased's real estate subject to a life estate of his wife in the homestead, and also all stocks and bonds of the deceased to the deceased's nephew, Chauncy J. Blair, and the deceased's son, Edward Tyler Blair (the petitioner herein) in trust. It was provided that the trustees should keep the property in good condition and pay all charges against it. The trustees were directed to pay the deceased's wife one half of the net income from the trust property as it arose or accrued during her lifetime, and to pay the other half to the petitioner

during his lifetime. It was provided that upon the death of the wife of the deceased the petitioner should receive the whole of the net income from the trust property as it arose or accrued during his lifetime. It was further provided that after the death of the petitioner the net income should be paid to the wife of the deceased or to the daughter-in-law of the deceased (wife of the petitioner) or the surviving children, under certain circumstances, until the youngest child of the petitioner reached the age of 21 years, whereupon the trustees were to transfer the trust property to such children of the petitioner. The will contained the following provision:

Twenty. I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time as the same shall be received paid to my said wife and to my said son and to his said wife and to their children and descendants of children in the case aforesaid shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in [fol. 95] law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth.

The wife of the deceased died on or about March 13, 1923.

On or about April 2, 1923, the petitioner made, executed, and delivered a certain indenture in which he is the party of the first part and Lucy Blair Linn, his daughter, is the party of the second part. Such indenture provided as follows:

That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Six Thousand Dollars ($6,000) for the remainder of the current calendar year, and Nine Thousand Dollars ($9,000) in each calendar year thereafter in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees

under the Will of William Blair, deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, deceased, for Six Thousand Dollars ($6,000) for the remainder of the current calendar year and for Nine Thousand Dollars ($9,000) in each year thereafter of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair deceased.

All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto.

On or about April 2, 1923, the petitioner made, executed, and delivered another indenture, in which he is the party of the first part and Edith Blair, his daughter, is the party of the second part. Such indenture is in all material respects identical with the above quoted indenture except that [fol. 96] the interest transferred amounted to $9,000 in each and every calendar year.

On or about April 2, 1923, the petitioner made, executed, and delivered a certain indenture in which he is the party of the first part and Edward Seymour Blair, his son, is the party of the second part. Such indenture is identical with that between the petitioner and Edith Blair.

On September 1, 1924, by an indenture entered into between the petitioner and Lucy Blair Linn, his daughter, the petitioner in consideration of love and affection and one dollar, sold, assigned, transferred, and set over to Lucy Blair Linn "an interest amounting to Two Hundred Fifty Dollars ($250) in each month in addition to the assignment made under date of April 2, 1923, in the net income which the said party of the first part, petitioner, now is or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, Deceased." Therein the petitioner empowered Lucy Blair Linn to receive and receipt to the trustees for the money in her own name or in his name. This indenture also provided that

payments should cease upon the death of either of the parties thereto.

On December 1, 1925, the petitioner and Lucy Blair Linn entered into another indenture similar in all material respects to the one executed between them on September 1, 1924, whereby the petitioner transferred to her an interest amounting to $500 per month in addition to the assignments already made, in the net income which the petitioner was entitled to receive during his life from the trustees under the will of William Blair, deceased.

By indentures similar in all respects to those entered into between the petitioner and Lucy Blair Linn, the petitioner on each of the dates of September 1, 1924, and May 1, 1925, transferred to Edith Blair, an interest of $250 per month, in addition to the assignments already made, in the net income which the petitioner was entitled to receive during his life from the trustees under the will of William Blair, deceased.

By indentures, otherwise similar to corresponding indentures referred to just above, the petitioner on September 1, 1924, and January 2, 1925, transferred to Edward Seymour Blair interests in the respective amounts of $250 per month and $500 per month, in addition to the assignments already made, in the net income which he was entitled to receive under the will of William Blair, deceased. [fol. 97] By indentures entered into between the petitioner and William McCormick Blair, his son, under dates of January 2, 1925, and January 2, 1926, which indentures are otherwise similar to the indenture entered into between the petitioner and Lucy Blair Linn on September 2, 1923, the petitioner transferred to William McCormick Blair the respective interests of $4,000 and $2,000 in each calendar year in the net income which petitioner was entitled to receive during his life from the trustees under the will of William Blair, deceased.

The petitioner and his son, William McCormick Blair, were during the years 1923 and 1929, inclusive, and still are, the duly authorized and acting trustees of the trust created by the will of William Blair.

On the respective dates of each of the indentures referred to above the petitioner notified the trustees in writing of the assignments contained therein and directed the trustees to make payment directly to the assignees. The trustees

accepted such assignments and noted their acceptance on the face of such notices.

During the years 1924, 1925, 1926, and 1929 the trustees of the William Blair trust distributed directly to Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair the following amounts out of the income of the William Blair trust:

	1924	1925	1926	1929
Lucy Blair Linn	$10,000	$12,500	$18,000	$18,000
Edith Blair	10,000	14,000	15,000	15,000
Edward Seymour Blair	10,000	18,000	18,000	18,000
Wm. McCormick Blair		4,000	6,000	6,000

Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair each filed income tax returns for each of such years in which they reported the amounts thus distributed to them by the trustees of the William Blair trust, and each paid to the collector of internal revenue in Chicago the taxes due thereon. Since the ruling of the respondent referred to hereinafter they have filed claims for the refund of the taxes on such income. No refunds will be made before these cases are finally determined.

The respondent, in auditing the fiduciary returns of the trustees of the William Blair trust and in auditing the returns of Edward T. Blair (petitioner), Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair, adjusted such returns to show that all of [fol. 98] the net income of such trust was distributed or distributable to the petitioner, and the respondent has ruled that the petitioner should pay an income tax on all of such income and that no tax was due from Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair on account of the part of the trust income distributed to them.

On or about March 24, 1933, the trustees of the William Blair trust filed a bill of complaint in the Superior Court of Cook County, Illinois, in Chancery, General Number 576471, praying that the court construe the will of William Blair and advise the trustees whether the assignments from the petitioner to Lucy Blair Linn, Edith Blair, Edward Seymour Blair, and William McCormick Blair were valid and advise the trustees whether they should pay to

the assignees part of the net income of the trust estate pursuant to the assignments. The defendants in this proceeding were Lucy Blair Linn, Edith Blair, Edward Seymour Blair, William McCormick Blair, and Edward Tyler Blair (petitioner), individually.

In such bill of complaint it was recited that the Commissioner of Internal Revenue, in auditing the reports of the trustees and the income tax returns of Edward Tyler Blair (petitioner), ruled that all of the income of the trust was distributable to Edward Tyler Blair notwithstanding the assignments and that Edward Tyler Blair should have paid an income tax on the full amount of the income of the trust; that Edward Tyler Blair appealed to the United States Board of Tax Appeals, which reversed the ruling of the Commissioner; that the United States Circuit Court of Appeals for the Seventh Circuit reversed the United States Board of Tax Appeals and held that the interest of Edward Tyler Blair under the will of William Blair could not be assigned in whole or in part by Edward Tyler Blair, since the trust was a spendthrift trust, and therefore all the income of the trust was distributable to Edward Tyler Blair notwithstanding the assignments; that a writ of certiorari to review such decision of the United States Circuit Court of Appeals for the Seventh Circuit was denied by the Supreme Court of the United States; that the trustees were then advised by counsel that the decision of the United States Circuit Court of Appeals raised a serious doubt as to the validity of the assignments and that such trustees might be personally liable if they distributed the income of the trust to persons other than Edward Tyler Blair; that the assignees under the assignments in question contended [fol. 99] that neither the trustees nor themselves nor any of them was a party to the proceeding before the United States Circuit Court of Appeals for the Seventh Circuit and that they are not bound by its decision; and that the trustees were informed and believed that if they followed the decision of the United States Circuit Court of Appeals for the Seventh Circuit and refused to distribute to the assignees they would be subjected to a multiplicity of suits by such assignees.

The Superior Court of Cook County held that all the assignments in question were invalid. Thereafter an appeal was taken to the Appellate Court of Illinois, First District,

and the decision of the Superior Court was reversed. In its opinion the Appellate Court stated in part:

As a general proposition, restraints on alienation are looked upon with disfavor by the Illinois courts. Davis v. Hutchinson, 282 Ill. 523; Merchants Loan & Trust Co. v. Patterson, 308 Ill. 519. * * *

* * * * * * *

While our Supreme Court has decided that restraints on the rights of creditors will be given effect, and also, that an expressed restraint on alienation will be enforced, in no case has it been held that an implied restraint will be enforced.

* * * * * * *

William Blair had complete confidence in the business ability of his son, as he named him as one of the executors and one of the trustees. All the circumstances indicate that William Blair did not intend to create a spendthrift trust but only to protect the trust property from involuntary transfers.

* * * * * * *

The words said to prohibit the assignments are, that the income should be paid to the testator's wife and to his son "directly upon their separate order and receipt therefor, for their sole and separate uses." There is force in the suggestion that the word "order" means something other than a payment into the hands of the testator's wife and son. The word "order" means a writing "requiring the party to whom it is addressed to deliver property of the person making the order to some one therein described." 3 Bouvier's Law Dictionary, Rawle's Third Revision, 2423. The trustees were required to pay the income to the life beneficiaries without any order from them. That [fol. 100] mandate was in the will itself. To pay the income to someone other than a beneficiary would require an order on the trustees signed by the beneficiary. The language of the will implies the very thing that has been done by the assignments.

* * * * * * *

If the testator had intended to restrict voluntary alienation by his son, this could have been readily accomplished by the use of a very few words. That he did not use such

words is strong evidence that he did not so intend. * * *

For the reasons indicated, we hold that the questioned assignments are valid, and the decree of the lower court is reversed and the cause remanded, with directions to enter a decree consistent with what is said in this opinion.

After the cause was remanded to the Superior Court of Cook County, such Superior Court entered its decree on March 31, 1934, which provided in part as follows:

First. Paragraph Twenty of the will of William Blair, when properly construed, is not a restraint on the right of said Edward Tyler Blair to voluntarily assign his interest in said trust estate or any part thereof.

Second. The assignments by Edward Tyler Blair to Lucy Blair Linn, dated April 2, 1923, September 1, 1924 and December 1, 1925, to Edith Blair dated April 2, 1923, September 1, 1924, May 1, 1925 and December 20, 1925, to Edward Seymour Blair dated April 2, 1923, September 1, 1924, and January 2, 1925, and to William McCormick Blair dated January 2, 1925 and January 2, 1926, are all valid.

In their brief before the Appellate Court of Illinois the assignees, who were the appellants in that court, took the position that the assignments were valid. Before such court the trustees, who were the appellees, took the position that the trust was a spendthrift trust and that the assignments were invalid, relying among other authorities, upon the decision of the United States Circuit Court of Appeals for the Seventh Circuit, heretofore mentioned, which is Commissioner v. Blair, 60 Fed. (2d) 340.

During the year 1925 the William Blair trust owned five pieces of real estate in or about Chicago, Illinois, including those located at 180 West Randolph Street, 729 South Wabash Avenue, and 608 South Michigan Avenue. The trust still owns these five pieces of real estate in Chicago.

During the year 1925 the trustees of the trust leased the piece of real estate located at 180 West Randolph Street for [fol. 101] a term of 25 years. Incident to the making of this lease they paid $11,640 as a commission to a real estate broker and $200 for legal services.

During the year 1925 the trustees also executed and delivered a lease for a term of 20 years on the property at 729 South Wabash Avenue. Incident to the making of this lease they paid $5,479.46 as a commission to a real estate broker and $300 for legal services.

In the year 1929 the trustees executed and delivered a lease for a period of 10 years on the property at 608 South Michigan Avenue. Incident to the making of such lease they paid $5,580 as a commission to a real estate broker.

Prior to the execution of the lease in 1929, the property at 608 South Michigan Avenue had been vacant for several months and was in need of extensive repairs. The lessors agreed that in lieu of making repairs on the premises they would allow the lessee an aggregate amount of $10,000 for repairs, improvements, and additions to the premises on the condition that not less than that amount should be expended, exclusive of trade fixtures and fittings. During 1929 the trustees paid such $10,000 to the contractor employed to do the work. The parties to the instant proceeding have stipulated that $5,000 thereof was for improvements to the building having a probable useful life equal to the term of the 10-year lease and $5,000 was payment for ordinary repairs to the building. They further stipulated that $5,000 thereof is deductible in 1929 and the other $5,000 should be spread over the remaining period of the lease.

The trustees of the William Blair trust charged the commissions and legal fees incurred in connection with the three leases and the $10,000 paid to the contractor for the work at 608 South Michigan Avenue against the income of the trust, so that the net income to be distributed to the petitioner was actually reduced by the amount of these expenditures.

In the deficiency notice for the year 1929 the respondent sustained the revenue agent in his determination of the amount of income of the trust estate of William Blair. The revenue agent's report contains the following:

On April 30, 1929 a ten year lease was negotiated and a commission of $5,580.00 paid. $10,000 was paid by the Estate to the tenant, Irwin & Company for expenditures made by them for new elevators and other changes required by them. * * * $1,038.66 or 1/10 of $15,580. for 8 months has been allowed in this report.

[fol. 102] OPINION

McMAHON:

The principal question presented is whether the amounts of $30,000, $48,500, $57,000, and $57,000 paid by the trustees of the William Blair trust to the four children of the peti-

tioner in the respective years 1924, 1925, 1926, and 1929, under the assignments referred to in our findings of fact, constituted taxable income to the petitioner in those years. The respondent held that the full amount of the net income of the trust was taxable to the petitioner in each year, since, under the terms of the will of William Blair, the petitioner's father, the petitioner was entitled to the same as it arose or accrued. It is the position of the respondent that the assignments do not relieve petitioner of his liability for the tax.

In Edward T. Blair, 18 B. T. A. 69, we were concerned with the tax liability of the same petitioner as is here involved for the year 1923 and had under consideration the three assignments made by the petitioner on April 2, 1923, to Lucy Blair Linn, Edith Blair, and Edward Seymour Blair. We there held that such assignments were valid and effected conveyances of the petitioner's interest in the trust to the extent indicated in each assignment and that the income accruing to such portion assigned was not taxable to the petitioner.

In Commissioner v. Blair, 60 Fed. (2d) 340; certiorari denied, 288 U. S. 602, the United States Circuit Court of Appeals for the Seventh Circuit reversed the decision of this Board in Edward T. Blair, supra, its holding being based upon its conclusion that under the law of Illinois the testamentary trust in question was a spendthrift trust and hence the petitioner could not make a valid assignment of his interest in the income from the trust prior to the time it was received by him. The Circuit Court there stated in part:

> The only question presented for our determination is whether the law will permit the trust income devised to respondent by his father's will to be assigned by him prior to his actual receipt of it. *If this question be answered in the affirmative, the ruling of the Board is correct;* if it be answered in the negative, respondent is properly chargeable with the taxes assessed, and the cause must be reversed.

[1] The citizenship of respondent and testator, the location of the trust property, and *the creation and administration of the trust all being in Illinois, we are required to be* [fol. 103] *guided by the laws of that state in determining the*

question presented. Spindle, Assignee, v. Shreve, 111 U. S. 542, 4 S. Ct. 522, 28 L. Ed. 512.

* * * * * * *

* * * *However, we are concerned only with the law as the Illinois courts have interpreted it, and whether that interpretation be right or wrong is beside the question.* [Emphasis supplied.]

At the time the Circuit Court of Appeals rendered its opinion quoted above the courts of Illinois had not, so far as we know, construed the will of the petitioner's father or passed upon the validity of the particular assignments in question. However, subsequent thereto, the Appellate Court of Illinois, First District, held that the testamentary trust was not a spendthrift trust and further held that all the assignments made by the petitioner were valid.

A somewhat similar situation was presented in Hubbell v. Helvering, 70 Fed. (2d) 668, decided by the United States Circuit Court of Appeals for the Eighth Circuit. There the question presented was whether amounts retained by trustees from the gross receipts of a trust estate for the years 1924, 1925, 1926, and 1928 to maintain a reserve for depreciation of trust assets and to offset the undepreciated cost of obsolete buildings constituted distributable and taxable income to the beneficiaries of the trust. That court, in a prior proceeding, involving the same question and taxpayer for the years 1922 and 1923, had held that the trust instrument did not require or provide for such depreciation and obsolescence charges and that the amounts set aside therefor were distributable and taxable to the beneficiaries. Hubbell v. Burnet, 46 Fed. (2d) 446, affirming F. C. Hubbell, 14 B. T. A. 1040; certiorari denied, 283 U. S. 840. However, after such prior decision of the Circuit Court of Appeals for the Eighth Circuit, a court of competent original jurisdiction of the State of Iowa, the District Court of Polk County, announced a contrary construction of the trust, and thereafter the Eighth Circuit held that despite its own prior decision it was required, under the decision of the Supreme Court in Freuler v. Helvering, infra, to follow the holding of the state court. The Circuit Court of Appeals for the Eighth Circuit stated in part:

If it were open to us in this case to construe this trust agreement, we would see no reason to change the views

and conclusions stated in the earlier case. Petitioner con-
[fol. 104] tends that we have no such freedom, but are bound to accept a contrary construction announced by the District Court of the state of Iowa in and for Polk County, entered July 10, 1931 (since our opinion in the above case). We think this contention ruled in favor of petitioner by the above case of John Freuler, Adm., v. Guy T. Helvering, Commissioner, decided by the Supreme Court, since submission of this case. In respondent's brief in this case is the statement: "This identical question is now before the Supreme Court in John Freuler, Administrator of the Estate of Louise P. V. Whitcome, v. Guy T. Helvering, * * *" We are not able to distinguish the two cases.

In Hubbell v. Helvering, supra, the Circuit Court of Appeals for the Eighth Circuit reversed the decision of the Board in F. C. Hubbell, 27 B. T. A. 814, upon this very issue. The Board's decision was based upon the case of Commissioner v. Freuler, 62 Fed. (2d) 733, which was reversed by the Supreme Court in Freuler v. Helvering, infra, prior to this decision of the Circuit Court of Appeals for the Eighth Circuit.

In Freuler v. Helvering, 291 U. S. 35, the Supreme Court held that, in determining the amount of the income taxable to beneficiaries of a trust under the provisions of section 219 of the Revenue Act of 1921, the decision of a court of the State of California having jurisdiction of the trust in an action brought by the trustee for approval of his account is binding. While the Supreme Court held that the holding of the California court constituted an "order governing the distribution" of the income within the meaning of section 219 of the Revenue Act of 1921, it also held that it constituted an adjudication of the property rights of the beneficiaries which must be considered in determining the Federal income tax liability of the beneficiaries. The Supreme Court stated in part:

Moreover, the decision of that court, until reversed or overruled, establishes the law of California respecting distribution of the trust estate. It is none the less a declaration of the law of the state because not based on a statute, or earlier decisions. The rights of the beneficiaries are property rights and the court has adjudicated them. What the law as announced by that court adjudges distributable

is, we think, to be so considered in applying section 219 of the Revenue Act of 1921.

[fol. 105] It is well settled that the decision of a state court of competent jurisdiction upon property rights, as between the parties to the proceeding in the state court, is conclusive upon the Federal courts until it is reversed or overruled, Freuler v. Helvering, supra; Utterhart v. United States, 240 U. S. 598; Hubbell v. Helvering, supra; and Commissioner v. Field, 42 Fed. (2d) 820, affirming Marshall Field, 15 B. T. A. 718, and in accordance with the above authorities, which are here closely in point, we hold that the decree of the Superior Court of Cook County, Illinois, entered pursuant to the decision of the Appellate Court of Illinois, First District, adjudicating that the testamentary trust in question herein is not a spend-thrift trust and that the assignments in question are valid, is binding upon us.

As in the case of Freuler v. Helvering, supra, there is no showing in the instant proceeding that the proceedings in the state courts were collusive or that the decision or decree of the state courts was entered by consent.

Our holding is not inconsistent with the holding of the Seventh Circuit in Commissioner v. Blair, supra, for the reason, as stated above, that the situation is different here, there having been a subsequent decision of the Appellate Court of Illinois construing the subject matter involved. Hubbell v. Helvering, supra.

Our attention has been called to the following provision of the statutes of Illinois:

> Opinions. Sec. 17. All opinions or decisions of said court [Appellate Court] upon the final hearing of any cause, shall be reduced to writing by the court, briefly giving therein the reasons for such opinion or decision, and be filed in the cause in which rendered: *Provided*, that such opinion shall not be of binding authority in any cause or proceeding, *other than in that in which they may be filed.* (Cahill's Revised Statutes of Illinois, 1933, Ch. 37, ¶ 49.) [Emphasis supplied.]

As we interpret this statute it means that any opinion or decision of an Appellate Court in Illinois shall not be binding as a precedent in any other proceeding, but it does not mean that it shall not be binding upon the parties to the

particular proceedings. It expressly contemplates that such opinion or decision shall be binding on such parties. See Chapman v. Northern Trust Co., 296 Ill. 253; 129 N. E. 836, decided February 15, 1926. This Illinois statute has been in effect since as early as 1885.

[fol. 106] In passing, we observe that, under the decision of the Illinois Appellate Court and resultant decree of the Superior Court, the petitioner can never recover the amounts paid under the assignment in question and the trustees must continue to pay the assignees; and, as will be hereinafter pointed out, the amounts paid were never income to the petitioner.

We have not overlooked the decision of the District Court for the Eastern District of Illinois in Hall v. Main, 34 Fed. (2d) 528, wherein it was stated by way of dictum that since the statutes of Illinois provide that the decisions of the Appellate Court shall not be accepted as binding precedents they can not be accepted by the Federal courts as determinative of the law of the state. Hall v. Main, supra, grew out of a bankruptcy proceedings and it was properly held by the United States District Court that the decision of an Appellate Court of Illinois with respect to the sale of some of the assets of the bankrupt was not binding upon the bankruptcy court since the trustee in bankruptcy was not a party to that proceeding. Hall v. Main, supra, was affirmed by the United States Circuit Court of Appeals for the Seventh Circuit in Main v. Hall, 41 Fed. (2d) 715, and such was the reason given by the Circuit Court for holding that the Illinois Appellate Court decision did not affect the determination of the bankruptcy court. The Circuit Court pointed out that the bankruptcy court had jurisdiction to pass on the question decided by the Appellate Court. It may be added that the Board's jurisdiction is limited here to redetermining the correct deficiency in tax and does not embrace the authority to try or decide upon the title to property. This case is clearly distinguishable from the instant proceedings.

We turn then to a consideration of the question of whether the petitioner, by the assignments in question, assigned future income or a present interest in property. This question was not passed upon by the Seventh Circuit in Commissioner v. Blair, supra. The court there specifically stated:

Inasmuch as we hold that respondent had no power to alienate the property in controversy, it becomes unnecessary to decide whether the income attempted to be alienated is future income or a present interest in property.

In Edward T. Blair, supra, we held that the petitioner, by virtue of the three original assignments involved herein, assigned portions of his trust estate and held that the petitioner was not taxable upon the income accruing there- [fol. 107] after to the assignees. The remainder of the assignments involved in the instant proceedings are either merely supplemental to or substantially the same as those three. The Board has thus passed upon this very phase of the question involved in the instant proceedings and we adhere to our holding therein that the assignments relieved the petitioner of tax liability upon the income accruing to the assignees under all of the assignments. As pointed out the Circuit Court of Appeals for the Seventh Circuit in Commissioner v. Blair, supra, did not pass upon or reverse the Board on this phase of the question which was involved in Edward T. Blair, supra; it expressly left it open. The instant proceedings, in so far as this phase of our question is concerned, are quite similar to Marshall Field, supra, followed by the Board in Edward T. Blair, supra, and affirmed by the United States Circuit Court of Appeals for the Second Circuit in Commissioner v. Field, supra. The following cases, involving circumstances more or less similar, also sustain our conclusion herein in this respect. Eugene Siegel, Executor, 20 B. T. A. 563; petition to review dismissed by the United States Circuit Court of Appeals for the Sixth Circuit on October 6, 1931; Copeland v. Commissioner, 41 Fed. (2d) 501; Rosenwald v. Commissioner, 33 Fed. (2d) 423; certiorari denied, 280 U. S. 599; Shellabarger v. Commissioner, 38 Fed. (2d) 566; Nelson v. Ferguson, 50 Fed. (2d) 121; certiorari denied, 28[illegible] U. S. 565; and Hall v. Burnet, 54 Fed. (2d) 443; certiorari denied, 285 U. S. 552.

It is contended by the petitioner that the respondent erred in computing the 1925 income of the trust distributable to the petitioner in not allowing to the trust a deduction in the amount of $17,619.46, being the total of the amounts paid in 1925 as commissions and legal fees in leasing certain properties belonging to the trust. It is alleged in the petition that the respondent allowed only $762.57 of this as

a deduction in the year 1925. This action of the respondent was correct. It is well settled that such expenditures are capital expenditures, which are not deductible in their entirety in the year in which paid out but are deductible pro rata over the term of the lease. Roby Realty Co., 19 B. T. A. 696; petition to review dismissed by the Eighth Circuit, 62 Fed. (2d) 1079; 950 Park Avenue Corporation, 20 B. T. A. 288; Mary C. Young, 20 B. T. A. 692; affd., Young v. Commissioner, 60 Fed. (2d) 715; certiorari denied, 287 U. S. 652; and Bonwit Teller & Co., 17 B. T. A. 1019; affd., [fol. 108] Bonwit Teller & Co. v. Commissioner, 53 Fed. (2d) 381; certiorari denied, 284 U. S. 690. The petitioner does not allege that the respondent failed to allow the proper deduction in this respect in the year 1926. The respondent's determination in these respects as to the years 1925 and 1926 is approved. The petitioner does allege, however, that the respondent erred in failing to allow as a deduction from the amount distributable to him in 1929 from the trust an amount of $762.57, being a part of the sum of $17,619.46 paid out by the trustees in 1925 as commissions and legal fees incident to the execution of the leases. From the record we can not determine that the respondent did not allow a proper deduction as to this in 1929. However, if such a proper deduction has not been allowed, adjustment will be made under Rule 50.

In computing the net income distributable to the petitioner from the trust in 1929 the respondent allowed as a deduction only a pro rata portion of the amount of $5,580 which was paid in that year as commissions to a real estate broker for the execution of a lease on property belonging to the trust. This the petitioner alleges was error. However, for the reason stated above, we sustain this holding of the respondent.

The parties have stipulated that of the amount of $10,000 paid by the trustees in 1929 upon the property at 608 South Michigan Avenue, the amount of $5,000 was for improvements to the building having a probable useful life equal to the term of the 10-year lease, that such amount should be spread over the remaining period of the lease, and that the remaining $5,000 was payment for ordinary repairs to

the building, which amount is deductible in 1929. Adjustment will be made accordingly under Rule 50.

Reviewed by the Board.

Decision will be entered under Rule 50.

SEAWELL dissents.

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 42313) * * *

DECISION—Entered March 22, 1935

Pursuant to the finding of fact and opinion of the Board promulgated on January 31, 1935, the respondent herein having on March 1, 1935, filed a notice of settlement and proposed recomputation and the petitioner having on March 19, 1935, filed an acquiesence in the computation as made [fol. 109] by the respondent, now therefore, it is

Order and Decided: That there is no deficiency in income tax for the year 1924, and for the years 1925 and 1926, there are deficiencies in income tax in the respective amounts of $1,775.70 and $258.30.

(S.) Stephen J. McMahon, Member. (Seal.)

Entered March 22, 1935.

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption—No. 63741) * * *

DECISION—Entered March 25, 1935

Pursuant to the findings of fact and opinion of the Board promulgated January 31, 1935, the respondent herein having on March 1, 1935, filed a notice of settlement and recomputation and the petitioner having on March 19, 1935, filed an acquiesence in the computation as made by the respondent, now therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the year 1929 in the amount of $1,887.70.

(S.) Stephen J. McMahon, Member. (Seal.)

Entered March 25, 1935.

IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * (Caption) * * *

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR—Filed June 12, 1935

To the Honorable Judges of the United United States Circuit Court of Appeals for the Seventh Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General [fol. 110] Counsel for the Bureal of Internal Revenue, and Bruce A. Low, Special Attorney, Bureau of Internal Revenue, and respectfuly shows:

I

That the petitioner on review is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. That the respondent on review, Edward T. Blair, is an individual residing at 1516 Lake Shore Drive, Chicago, Illinois, and filed his income tax returns for the years 1924, 1925, 1926 and 1929 with the Collector of Internal Revenue for the First District of Illinois; that the Collector of Internal Revenue for the First District of Illinois has his office within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit; that the Court in which the review of this proceeding is sought is the United States Circuit Court or Appeals for the Seventh Circuit.

II

The nature of the controversy is as follows:

The taxpayer is an individual residing in the State of Illinois. Under the express terms of the duly probated will of his deceased father, he became the sole beneficiary of a certain trust created by his father after the death of his wife. His wife died on March 13, 1923. The will of his deceased father was in part as follows:

"Twenty. I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to

be, from time to time as the same shall be received paid to my said wife and to my said son and to his said wife and to their children and descendants of children in the cases aforesaid shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth."

On or about April 2, 1923, the taxpayer, as party of the first part, executed and delivered three indentures to his three children, Lucy Blair Linn, Edith Blair, and Edward [fol. 111] Seymour Blair, as parties of the second part. Each of the three original indentures provided (except as to name and amount) in part as follows:

"That the said party of the first part, in consideration of love and affection and One Dollar ($1) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto said party of the second part an interest amounting to Six Thousand Dollars ($6,000) for the remainder of the current calendar year, and Nine Thousand Dollars ($9,000) in each calendar year thereafter in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life from the Trustees under the Will of William Blair, deceased, late of the said City of Chicago; and the said party of the first part hereby authorizes and empowers said party of the second part, either in her own name or in the name of the said party of the first part, to receive and receipt to the Trustees under the Will of William Blair, deceased, for Six Thousand Dollars ($6,000) for the remainder of the current calendar year and for Nine Thousand Dollars ($9,000) in each year thereafter of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will of William Blair, deceased.

"All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by

operation of law, and shall cease upon the death of either party hereto."

At several subsequent dates the taxpayer executed like indentures providing for additional annual payments to his three children named above, and also in a similar manner provided for the payment of certain sums to his fourth child, William McCormick Blair. During the years in question the taxpayer's children reported as income the following sums, which were added to the income reported by the taxpayer for the years in question:

	1924	1925	1926	1929
Lucy Blair Linn	$10,000	$12,500	$18,000	$18,000
Edith Blair	10,000	14,000	15,000	15,000
Edward Seymour Blair	10,000	18,000	18,000	18,000
Wm. McCormick Blair		4,000	6,000	6,000

The identical issue involved in this case was presented to the Board by this taxpayer at 18 B. T. A. 69, wherein the [fol. 112] Board held adversely to the Commissioner. On appeal the Circuit Court of Appeals for the Seventh Circuit reversed the Board in Commissioner v. Blair, 60 Fed. (2d) 340, certiorari denied 288 U. S. 602. The Circuit Court, however, passed only upon the question as to whether or not the taxpayer was the beneficiary under a spendthrift trust and did not discuss the question as to whether the indentures provided for assignments of future income or assignments of a present interest in property. Subsequent to the decision of the Circuit Court of Appeals in Commissioner v. Blair, supra, the Appellate Court of the State of Illinois for the First District, in a suit between the trustees under the will of William Blair and the beneficiaries under the taxpayer's assignments, reversed the lower court (Superior Court of Cook County) by a two to one decision, wherein it was held that the trust was not a spendthrift trust. No appeal was taken to the Supreme Court of Illinois, the highest state court.

III

The said Commissioner being aggrieved by the conclusion of law contained in the opinion of the United States Board of Tax Appeals entered January 31, 1935, and by the final decision entered by it on March 22, 1935, desires to obtain

a review thereof by the United States Court of Appeals for the Seventh Circuit.

Wherefore, he petitions that a transcript of record be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Seventh Circuit, and transmitted to the Clerk of said Court for filing and appropriate action to the end that the errors complained of may be reviewed and corrected by the United States Circuit Court of Appeals for the Seventh Circuit.

IV

The Commissioner's assignments of error are as follows:

1. The Board erred in holding that the taxpayer had power to alienate the property in controversy, there being no evidence to support such finding.

2. The Board erred in not holding that the petitioner was a life beneficiary under a spendthrift trust.

3. The Board erred in holding that the taxpayer by certain indentures assigned a present interest in the estate of [fol. 113] his deceased father to his four children, there being no evidence to support such finding.

4. The Board erred in not holding that the taxpayer was taxable on all of the income accruing from his deceased father's estate, including that portion assigned to his four children.

5. The Board erred in holding that itewas not required to follow the decision of the Seventh Circuit Court of Appeals in Commissioner v. Blair, 60 Fed. (2d) 340.

6. The Board erred in not holding that the question as to whether a spendthrift trust was created was res adjudicata.

(Signed) Frank J. Wideman, Assistant Attorney General. (Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue. Of Counsel: Bruce A. Low, Special Attorney, Bureau of Internal Revenue.

Duly sworn to by Bruce A. Low. Jurat omitted in printing.

[fol. 114] IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * (Caption) * * *

NOTICE OF FILING PETITION FOR REVIEW—Filed June 27, 1935

To Edward T. Blair, 1516 Lake Shore Drive, Chicago, Illinois; J. F. Dammann, Esq., 120 West Adams Street, Chicago, Illinois:

You are hereby notified that the Commissioner of Internal Revenue did, on the 12th day of June, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 12th day of June, 1935.

(Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 14 day of June, 1935.

J. F. Dammann, Attorney for Respondent on Review.

IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * (Caption) * * *

PRÆCIPE FOR RECORD—Filed September 9, 1935

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the [fol. 115] Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.

(a) Petitions, including annexed copies of deficiency letters.

(b) Answers.

3. Findings of fact, opinion and decisions of the Board.

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Statement of the evidence as settled and allowed.

6. Order enlarging time for the preparation of the evidence and for the transmission and delivery of the record.

7. This præcipe.

(Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue.

Service of a copy of the within præcipe is hereby admitted this 28 day of Aug., 1935.

J. F. Dammann, Calvin F. Selfridge, Attorney for Respondent.

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption) * * *

ORDER AS TO STATEMENT OF EVIDENCE—Entered October 2, 1935

The Board having promulgated its findings of fact and opinion in the above-entitled proceedings on January 31, 1935, and having entered its decisions in such proceedings on March 22, 1935, and March 25, 1935, respectively, counsel for the respondent having duly filed a petition for review of the Board's decisions by the United States Circuit Court of Appeals for the Seventh Circuit and having filed with the Board a præcipe calling for the transmission, among other things, to the Circuit Court proposed "State-
[fol. 116] ment of Evidence" which is approved by counsel for the petitioner, now therefore, the premises having been duly considered, it is

Ordered that the clerk of this Board be and he hereby is directed to omit any statement of evidence in the record to be transmitted by him to the United States Circuit Court of Appeals for the Seventh Circuit. (See memorandum attached.)

(Signed) Stephen J. McMahon, Member. (Seal.)

October 2, 1935.

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption) * * *

MEMORANDUM

The respondent, in his petition for review, does not assign any error in the admission or rejection of evidence or on the ground that a finding of the Board is unsupported by any evidence. Accordingly under section II of Rule 32 of the United States Circuit Court of Appeals for the Seventh Circuit, no statement of evidence is permitted or required. Joseph E. Uihlein, 31 B. T. A. 932.

In its report the Board stated: "These proceedings were submitted upon a stipulation of facts and certain exhibits, all of which we incorporate herein by reference." Under section IV of Rule 32 of the United States Circuit Court of Appeals for the Seventh Circuit, the clerk of this Board will transmit as a part of the record the findings of fact of the Board which, by virtue of the above quoted statement, includes the stipulation of facts and the exhibits. Thus the United States Circuit Court of Appeals for the Seventh Circuit will have before it all the evidence submitted to the Board and to send up as a part of the record, a statement of evidence, would be an unnecessary duplication and would serve no useful purpose. The proposed statement of evidence contains the same stipulation and exhibits as were made a part of the findings of fact of the Board as appears from the above quoted language.

(Signed) Stephen J. McMahon, Member. (Seal.)

October 2, 1935.

[fol. 117] Clerk's certificate to foregoing transcript omitted in printing.

BEFORE UNITED STATES BOARD OF TAX APPEALS

* * * (Caption) * * *

ORDER ENLARGING TIME—Entered August 1, 1935

On motion of counsel for petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition

for review of the above entitled proceeding by the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to September 12, 1935.

(Signed) Eugene Black, Member.

Dated Washington, D. C., August 1, 1935.

Now, October 18, 1935, the foregoing order enlarging time certified from the record as a true copy.

B. D. Gamble, Clerk, U. S. Board of Tax Appeals.
(Seal.)

[fol. 118] Before United States Board of Tax Appeals

* * * (Caption) * * *

Order Enlarging Time—Entered September 12, 1935

For cause appearing of record, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Seventh Circuit, be and it is hereby extended to November 1, 1935.

(Signed) Eugene Black, Member.

Dated Washington, D. C., Sept. 12, 1935.
jd

Now, October 18, 1935, the foregoing order enlarging time certified from the record as a true copy.

B. D. Gamble, Clerk, U. S. Board of Tax Appeals.
(Seal.)

[fols. 119 & 120] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 121-123] Appearances of counsel omitted in printing.

[fol. 124] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MINUTE ENTRY—February 25, 1936

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. L. W. Post, counsel for Petitioner, and by Mr. J. F. Dammann, Counsel for Respondent, and the court having heard the same, takes this matter under advisement.

[fol. 125] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1935, JANUARY SESSION, 1936

No. 5648

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

EDWARD T. BLAIR, Respondent

Petition for Review of Decisions of the United States Board of Tax Appeals

OPINION—Filed April 11, 1936

Before Evans and Alschuler, Circuit Judges, and Baltzell, District Judge

EVANS, Circuit Judge:

The taxability of a beneficiary under a testamentary trust for income theretofore assigned by him to his children is before this court for the second time. We previously held (60 F. (2d) 340) it to be a spendthrift trust under the Illinois law and held the income for 1923 taxable to the assignor. The instant appeal involves identical facts, except that the tax years involved are 1924 to 1926 and 1929, and reference is therefore made to our previous opinion for a statement of facts.

After the opinion of this court was announced, the trustees under the testamentary trust instituted suit against

assignees in the Superior Court of Illinois to determine the validity of the assignments so they might know whether they were validly paying the beneficiary's income to the assignees, instead of paying it to the beneficiary. The Superior [fol. 126] Court held, following this court's view, that this was a spendthrift trust and no assignment of income could be validly made. On appeal the Illinois Appellate Court for the first district reversed (274 Ill. Ap. 23) the Superior Court's ruling and held the trust not to be of spendthrift character and held the assignments valid and directed the Superior Court to enter a decree accordingly. The Board of Tax Appeals in the instant suit felt compelled to follow the Illinois Appellate Court decision which was rendered after the Circuit Court of Appeals decisions. From the Board's decision, the Commissioner appeals.

Under the assignments, taxpayer's children received income as follows: 1924, $30,000; 1925, $48,000; 1926, $57,000; and 1929, $57,000. The children have paid tax on these sums and, since the Commissioner's determination against respondent, have filed claims for refunds which will not be acted upon until after termination of the case.

It is petitioner's chief contention that in spite of the assignment the income is nevertheless taxable to respondent because he had assigned merely the right to future income and no present interest or estate in the corpus. This court on the previous appeal found it unnecessary to pass on that question. (60 F. (2d) 340.)

Respondent maintains that the decree of the Illinois Superior Court (pursuant to the Appellate Court's mandate) is decisive of the property rights of the respective parties and also insists that an existing property right was duly assigned by Blair, the beneficiary, to his children.

Ch. 37, Sec. 41, Smith-Hurd Ill. Ann. Stats., provides:

"All opinions or decisions of said court upon a final hearing of any cause, shall be reduced to writing by the court, briefly giving therein the reasons for such opinion or decision, and be filed in the cause in which rendered."

This section amended, on April 25, 1935, the same section as previously existing by striking therefrom the proviso:

"Provided, That such opinion shall not be of binding authority in any cause or proceeding, other than in that in which they may be filed."

Binding Effect of State Court Determination of Rights Under Trust. We are first called upon to determine whether the decree of the Superior Court of Illinois, entered pursuant to a direction from the Illinois Appellate Court, adjudging the trust not a spendthrift trust and holding valid the assignments of income therefrom, is binding upon this [fol. 127] court in an income tax case, especially in view of the fact that on another occasion we held the trust to be a spendthrift trust. 60 F. (2d) 340.

We are of the opinion that the inferior state court's decree adjudging the rights between the parties must be followed by this court.

A somewhat analogous case is that of Freuler v. Helvering, 291 U. S. 35. There, the Court was passing upon the taxability of income distributed to the beneficiaries, which income represented depreciation of the corpus of the trust. The state court (California Probate Court), in an independent suit, held that the trustee should have reserved the amount which represented the depreciation. The Court, in that case, was construing section 219 (a), Act of 1921, which provides:

"* * * the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary that part of the income of the estate or trust for its taxable year which, pursuant to the instrument or *order* governing the distribution, is distributable to such beneficiary, whether distributed or not, * * *."

The Court held the California Probate Court decree to be binding. It said:

"We think the order of the state court was the order governing the distribution within the meaning of the Act. Moreover, the decision of that court, until reversed or overruled, establishes the law of California respecting distribution of the trust estate. It is none the less a declaration of the law of the State because not based on a statute, or earlier decisions. The rights of the beneficiaries are property rights and the court has adjudicated them. What the law as announced by that court adjudges distributable is, we think, to be so considered in applying Section 219 of the Act of 1921. * * *

"The decree was a judgment which fixed the rights of the remaindermen and the obligations of the life tenants."

The court also said:

"The word 'order' (in the statute) must be given some meaning as applied to trust income which is to be distributed periodically; and we think it clear that the section intended that the order of the court having jurisdiction of the trust should be determinative as to what is distributable income for the purpose of division of the tax between the trust and the beneficiary."

[fol. 128] The court does not discuss the fact that the decree was that of an inferior tribunal. It was passing upon a different subsection of the Act, one having a specific provision commanding recognition of an "order" governing distribution. The statute did not specify the rank of the court which made the order.

Although there are these distinctions between the Freuler case and the instant one, we accept it as authority for holding that a final decree of a state court, supreme or inferior, entered in a specific matter such as the interpretation of rights under a testamentary trust, is binding upon a Federal court in determining the character of a trust, the income from which is the subject of a Federal tax.

The logic supporting the adoption of such a rule is the same as that which furnishes the basis of res judicata. We are adopting the ruling of a court having jurisdiction of the subject matter and of the person. The orderly administration of justice and final settlement of property rights will be promoted by so doing. It is true that this court has previously reached a contrary conclusion—that the trust was a spendthrift one—but our decision was before the Illinois court had declared itself in reference to a matter to which its jurisdiction extended. Moreover, the previous proceeding in this court was one to which the beneficiaries were not a party, whereas they were the parties to the state court proceeding.

This conclusion is not inconsistent with that announced in Graham v. White-Phillips Co., 296 U. S. 27 (same case in this court, 74 F. (2d) 417), wherein the Supreme Court held that an Illinois Appellate Court decision was not binding upon this court in the construction of the Uniform

Negotiable Instruments Law. The Court there pointed out that the Illinois appellate decisions were not in accord on that question; that a statute provided that their opinions "shall not be binding authority in any case or proceeding other than that in which they may be filed." This proviso, as above pointed out, has since been repealed. The effect of such repeal is undetermined. As the section now stands, it merely provides for the reducing of opinions to writing upon final hearing.

It may well be argued that the repeal of the provision making the decision binding only in the cause in which it is filed extended the scope and effect of the decisions of the Illinois Appellate Courts. That would be our view of its effect. But, it is for the Illinois courts to finally determine the effect of this repeal statute, and when those courts have spoken we will willingly adopt their construction.

[fol. 129] We rest our conclusion not upon the effect of the repeal of the state statute, but upon the judicial determination of rights by a court of competent jurisdiction authorized to hear and determine the rights of the parties under this testamentary trust. The final decision of such a court, which is not appealed from, is binding upon the Federal court for the purpose of determining the character of the trust which in turn may be determinative of a Federal income tax assessment.*

The correctness of our conclusion is not entirely free from doubt. We would be better satisfied if the suit in the state court had been more adversary in its nature. There is that which suggests a friendly suit to avoid taxes, to which there was no opposition or adverse party. All who joined in the litigation were desirous of obtaining the same end—the avoidance of a large part of the Federal income tax through division of the income by the beneficiary among his children. The Government was not a party to that suit. The suit was prosecuted only until a favorable decision was reached and then no appeal was taken. The first court ruled adversely to the complainants. On appeal a favorable decree was entered. There was no one interested in taking the case to the Illinois Supreme Court and

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* This conclusion seems to be somewhat at variance with the decision in Miss. Valley Trust Co. v. Commissioner, 72 F. (2d) 197. But, see Hubbell v. Helvering, 70 F. (2d) 668, by the same court.

the litigation ceased. In other words it was not unlike a consent decree. But consent decrees are binding if entered by a court of competent jurisdiction with the parties properly before it, in the absence of a showing of collusion between the parties or fraud upon the court. The record before us does not show either collusion or fraud, save by circumstances which are also consistent with good faith on the part of the litigants. We, therefore, accept the Illinois Appellate Court decision as controlling upon the nature of this trust.

Did Assignments Effectively Bar Taxation of Income to Assignor? Respondent executed eleven assignments during the period from 1923 to 1926 in varying amounts to his four children, individually. The assignments were similar in form, reciting a consideration of one dollar, and were to continue until the death of either party to the assignment. Each document assigned, sold, and transferred to the assignee an interest, in a specified amount for each calendar year thereafter, in the net income which the assignor is or may be entitled to receive during his life from the trustees under the will of his father, and empowered [fol. 130] the assignee to receipt for the amount. Excerpts from the will and the assignments are set forth in the margin.* The assignments were made after testator's

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* The will provided:

"Fourteenth:—To my nephew Chauncey J. Blair and my son Edward Tyler Blair, of Chicago, I give devise and bequeath all the rest and residue of my * * * estate * * *. To have and to hold the same to them and to the survivor of them and to their successors, and to the heirs, executors and administrators of such survivor and successor, but in trust however to and for the following uses and purposes namely: in trust to hold, manage control, improve and lease the same, at their discretion, and the same to keep well insured and in good and tenantable repair and condition * * * and the income from said trust fund and estate to use expend account for and pay as follows to wit: * * *

"B. To pay to my said wife, as the same shall from time to time be received, one equal half part of all the net income which shall arise or accrue from the said trust fund * * *

"C. To pay to my said son, as the same shall from time to time be received, the other equal half part of all the net

wife died and at a time when Blair was entitled to the entire income from the trust for life. It also provided that [fol. 131] the income in the hands of the trustees should not be subject to the debts or obligations of Blair.

It is the Commissioner's contention that the respondent is liable for income taxes upon the income which was paid to his children, by virtue of the assignments, because the nature of respondent's interest was not that of a present property right capable of being assigned in praesenti—that, to avoid the tax, the assignor's interest must be an interest in the corpus of the trust or in the property from which the income accrued. Had he such a property interest and assigned it with the right to receive future income therefrom, then he could divest himself of tax liability upon said income.

A somewhat complete collection of cases is here attempted.

The Supreme Court has not had occasion to pass upon the identical question. In the case of Lucas v. Earl, 281 U. S. 111, an attorney assigned to his wife one-half of all income he should earn. The court held that notwithstand-

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income which shall arise * * * from the said trust fund * * * during the full term of his natural life.

"D. At and after the decease of my said wife to pay my said son the whole of said net income for and during the full term of his natural life.

"E. At and after the decease of my said son, he leaving no child or children, * * * him surviving but leaving his said wife him surviving * * * to pay to the said wife of my said son one equal third part of said net income for and during the full term of the natural life of my said wife * * *.

"I. At and after the decease of my said wife, and of my said son and of the said wife of my said son, leaving them surviving no child or children nor any descendants of any deceased child or children of my said son, then to distribute * * * the whole * * * to my heirs at law; * * *

"Twenty:—I do hereby declare and direct that the income from said trust fund and estate which is herein ordered to be, from time to time as the same shall be received paid to my said wife and to my said son and to his said wife

ing this assignment the husband was taxable upon the entire income earned, because the taxing act specifically taxed the earner of the income, and he could not escape the tax through an assignment of future earnings in whole or in part.

In an assignment of future partnership income by a husband, who was a partner, to his wife (Burnet v. Leininger, 285 U. S. 136), the court held the income was taxable to the partner and not to the wife inasmuch as the tax was upon a partner's income. In Corliss v. Bowers, 281 U. S. 376, the taxpayer transferred a fund in trust, the income payable for life to his wife, but he retained the complete power of revocation. The court held the income was taxable to the donor, entire emphasis being placed upon the taxpayer's unfettered control of the trust.

See also Douglas v. Willcuts, 296 U. S. 1, 9.

This circuit, in the case of Rosenwald v. Commissioner, 33 F. (2d) 423, was passing upon the effect of an assignment by Rosenwald to the trustees of a charitable fund he had created, of all dividends and interest and rents on cer-

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and to their children and descendants of children in the cases aforesaid shall be paid to them directly upon their separate order and receipt therefor, for their sole and separate use respectively, and that *the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above herein set forth.*"

The assignments provide:

"This Indenture Made and entered into * * * by and between Edward T. Blair * * * party of the first part, and Lucy Blair Linn, * * * party of the second part, Witnesseth:

"That the said party of the first part, in consideration of love and affection and One Dollar ($1) * * * does hereby sell, assign, transfer, * * * an interest amounting to * * * $6,000 for the remainder of the current calendar year, and * * * $9,000 in each calendar year thereafter in the net income which the said party of the first part now is, or may hereafter be, entitled to receive during his life, from the Trustees under the Will of Wil-

tain stocks, mortgages, bonds, and leaseholds, for a period of five years. We held Rosenwald was nevertheless taxable as to the income passing to the trust fund, on the ground that the taxpayer in actuality retained dominion over the income by virtue of the right to dispose of the principal. It was pointed out that there might be a difference if the corpus of stocks, leaseholds, etc., had been [fol. 132] conveyed to trustees irrevocably, or for a term of years and who, in turn, were to pay over the income.

Another case decided by this court is that of Shellabarger v. Commissioner, 38 F. (2d) 566, wherein two sisters made a contract whereby one agreed to assign to the other, income which she was to receive under their father's testamentary trust if the assignee-sister did not contest the will. This court held the assignee liable for income tax on the income from the trust, even though it was first paid to the assignor. It was pointed out that there was no power of revocation in the assignor although the assignee's income was to cease if she should at any time start contest of the will. The court said:

"* * * where the beneficiary of a trust assigns an interest in the income therefrom, the grantee who received the income pursuant to the agreement, and not the grantor, is liable for the federal income tax thereon."

There is no contention made that the assignments in the case at bar were revocable. An examination of the assignments shows they ceased upon the death of either party. The case turned upon the facts peculiar to that case.

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liam Blair, Deceased * * * and the said party of the first part hereby authorizes * * * said party of the second part * * * to receive and receipt to the Trustees under the Will * * * of the income and moneys which shall at any time become payable to said party of the first part under or by virtue of the terms and provisions of the said Will * * *.

"All payments hereunder shall be made in person to said party of the second part and not upon any written or verbal order nor upon any assignment, nor upon any transfer by operation of law, and shall cease upon the death of either party hereto. * * *"

In the Sarther Grocery Co. v. Commissioner, 63 F. (2d) 69, case, this court said that the Shellabarger case "was peculiar in its facts," which indeed it was, particularly in the fact that the transfer to the sister of part of the income from the trust estate was in settlement of a threatened will contest, which, had it been successful, would have entirely defeated the trust.

In the case of Bishop v. Commissioner, 54 F. (2d) 298, this court was passing upon the taxability of insurance renewal commissions where the agent previously assigned to his wife one-third of all renewal commissions which he thereafter would receive under his contract with his employer insurance company. The court, nevertheless, held the husband-assignor taxable on the assigned income, pointing out the uncertainty at the time of assignment of the accrual of renewal commissions. In this case this court intimates that there needs be some property owned capable of assignment in praesenti before tax liability can be avoided. We said:

"* * * We are convinced that the subject-matter of petitioner's assignment to his wife was income per se, and that it was not in any sense a present property right which was itself productive of income. * * * what property did she then own which produced these commissions? Certainly none, * * * It is perfectly obvious from this [fol. 133] language (in the assignment) that petitioner had no intention of conveying a property right in praesenti, but only in future income as it might become due to him. This brings the case squarely within the rule that instruments intended to deflect income subsequently falling due serially are unavailing for tax purposes. * * *."

In Copland v. Commissioner, 41 F. (2d) 501, a husband assigned to his wife all his interest in a stock syndicate and all income to be derived therefrom (although he remained liable for losses). This court held the income taxable to the wife, pointing out that there had been an irrevocable transfer of interest in the syndicate—in the corpus of the syndicate as well; that lack of consideration was immaterial inasmuch as the gift was completed; that the syndicate was not in essence a partnership so that the income constituted remuneration for personal services.

The Court of Appeals of the third circuit, in the case of Nelson v. Ferguson, 56 F. (2d) 121, passed upon a case where an employee had vested title to a patent in his employer (defeasible on certain conditions) reserving the right to a certain share in the profits from the patent. The court stated that this right to profits was such a present property right that it might be assigned to a wife irrevocably, and he be thereby relieved of income taxes upon the profits passing to her under the assignment. The court pointed out that what was assigned was not future salary (as in the Earl case) or of things not then in existence, but was an existing thing—property in a contract.

"The assignment being of property was therefore not merely an assignment of income when earned, though from the property assigned profits and income were expected to flow. * * * Though the future income from this property right was uncertain and contingent as to amount, the right itself, the thing assigned, was fixed and certain—not revocable (as in the Corliss case) and was independent of any future service or any future action on the part of the assignor."

In discussing the Earl case, the court said:

"There was no existing thing, tangible or intangible, to which at its execution the contract could presently attach. * * * One-half of the husband's earnings never could be paid to the wife unless and until earnings had accrued to him on account of things he had done, services he had rendered. * * *"

[fol. 134] The Court of Appeals of the second circuit passed upon an analogous question in the case of Commissioner v. Field, 42 F. (2d) 820, where a beneficiary under a trust assigned to his wife two-thirds interest in all income he received from the trust. The assignor also was to receive the corpus of the trust when he was fifty, and he also had the right to terminate the trust at any time. The court held the assignor nontaxable as to the income assigned. It said:

"* * * So far as we know, it is universally true that the law considers an equitable interest for life or for a term of years as present property, alienable like any other

* * *. The law of Illinois is the same * * *. In * * * 268 U. S. 161, * * * a series of payments of income was treated as integrated into an existing interest, and for that reason alone the payments were income. No doubt the difference is conventional; there is no inherent reason why other series of future installments should not be regarded as constituting a single right, as is an annuity or the reversion of a sublease. Some are, some are not; the distinction is historical, not rational. The interest * * * was presently assignable like a bond or building * * *."

This court commented upon the Field case in the Bishop case, saying:

"In that case the income on the trust fund was not contingent—it was a present right, and fixed in all respects except as to amount."

Two District Court cases, O'Malley-Keyes v. Eaton, 24 F. (2d) 436, and Young v. Gnichtel, 28 F. (2d) 789, held the assignors to be nontaxable as to income passing to assignees under irrevocable assignments of interests in trust funds.

The Court of Appeals in the eighth circuit in Van Meter v. Commissioner, 61 F. (2d) 817, held insurance renewal commissions taxable to the earner thereof despite assignment and payment of commissions directly to assignee.

In Helvering, Commissioner v. Coxey, 79 F. (2d) 661 (C. C. A. 3), taxpayer was to receive entire income for life from residuary trust under his father's will, the corpus to go to his children upon his death. There was no restriction upon the right to assign. The taxpayer by an irrevocable assignment to his wife, from whom he was separated, assigned $8,400 per annum during her life and the life of the children. The wife agreed to ask for no further support for [fol. 135] herself or her children. She also released all dower right in taxpayer's property. The trustee had paid her the sum agreed upon for two years. The court said:

"He made an irrevocable assignment and retained no control over what he assigned. The courts and this board have held that the owner of such property, who absolutely and irrevocably divests himself of all or a part of the prop-

erty, is no longer burdened with tax on the income from the part assigned. * * * In so holding the board committed no error. The assignment was absolute, irrevocable, and so far as the part assigned was concerned, extinguished all future income which otherwise would have accrued to the taxpayer * * *."

In Brewster v. United States, 9 F. Supp. 686, the Court of Claims said:

"It is not denied that the income here in dispute received by plaintiff from her father's estate would have been taxable to her had she not entered into a contract with her brother Paul providing for the payment of a portion thereof to him. The character of the income rendered is taxable under the statute and the only question is whether the payments to her brother, in fulfillment of her agreement with him, had the effect of transferring the tax liability to her brother Paul. We think the agreement in question was not an assignment of property from which the income in question was derived, and in the situation here presented the amounts involved had to become income to plaintiff before she could pay them to her brother. The agreement between them imposed no obligation on the trustees to pay the brother any amount. The trustees were not parties to the contract and their only obligation, in so far as the case is concerned, was to pay the income from the trust fund to the plaintiff. * * * From a consideration of the agreement and the surrounding facts and circumstances, we are of opinion that the contract did not constitute an assignment by plaintiff of any portion of the trust income as such, nor did it create in Paul any ownership of any part of such income. * * * (The court said it was unable to agree with the Shellabarger case.) * * * Upon the facts in this case, we are of the opinion the amounts paid by plaintiff to her brother Paul, pursuant to the agreement between them, were first income to her and were properly included in her gross income by the defendant. * * *"

[fol. 136] In Wood v. Commissioner of Internal Revenue, 74 F. (2d) 78 (C. C. A. 6), the court said:

"The sole legal question is whether one-half of the dividends paid by E. & Co. in 1926 on shares of stock held by

the trustees of the estate of W. was income to petitioner who received; under the decedent's will, the right to the net income from such estate for life, or whether such sum was income to petitioner's children, to whose trustees she had released one-half of the net income resulting from the investment in E. & Co.

"* * * The Court of Claims held that the assignment of income as it is received does not relieve from tax thereon the person to whom the income was payable in the first instance. This decision was correct. (The court pointed out that the trustees of the decedent's estate could at any time sell the stock of E. & Co. and thereby cut off the income.) * * * All future payments into the trust estates were of anticipatory income. * * * The dividends attempted to be released might never be received. There was no assignment, release, or transfer of the property right which produced the income. Every case cited on this point for the petitioner depends for its decision upon a finding that an existing property right had been assigned. We search this record in vain for an assignment in praesenti, and find only a release of income that might or might not be earned in the future. Such an arrangement could not relieve the petitioner of the tax. * * *"

See also Porter v. United States, 52 F. (2d) 1056.

It is not easy to reconcile the twentieth paragraph of the will with any conclusion which would exempt the beneficiary, Blair, from income tax upon the entire income. The provision that—

"* * * the same shall not be nor be made nor held in any manner nor by any proceedings whether in law or equity while yet in the hands of said trustees liable for or subject to the payment of any of the debts or obligations of either of the persons entitled to the same as above set forth"

is inconsistent with the income's assignability to pay debts or for any other purpose, until after it has become the property of said beneficiary. It is at least persuasive of the construction which we must place upon the character of the beneficiary's interest.

[fol. 137] Considering all the evidence, we are convinced that the entire income was properly chargeable to Blair for the purpose of determining his income tax.

The question is not one of the validity of the assignments but for the purpose of determining income tax liability it is one involving the date when the income became transferable. This question turns upon whether the assignor had such an interest in the corpus of the trust as to permit of its transfer or whether the assignor's interest was separate from the property and limited to the income which accrued from year to year.

The latter seems to be the situation. The testator made an income provision for his son. It was in the trustees' hands beyond the reach of the son's creditors. The son could not create obligations enforceable against it. Upon the son's death the said income ceased. It passed to either his children or to the heirs of the testator or in part to the widow of the son, depending upon survivorship, etc. The income passed to them not by act of the son, but by the testamentary trust provision of the testator. The son's interest was therefore not in any way attached to the corpus of the estate that produced the income. The income was not even subject to his disposition until he received it. The attempted assignment to his children was in legal effect merely a direction to the trustees to pay to his children, out of the income due to him, various specified amounts each year. It does not militate against the conclusion that the income was his, and was due to him. While he could authorize the trustees to deliver to another what was due to him, it was not deliverable until it was his to dispose of.

The order of the Board of Tax Appeals is reversed with directions to enter an order in accordance with the views here expressed.

[File endorsement omitted.]

[fol. 138] IN UNITED STATES CIRCUIT COURT OF APPEALS

5648

COMMISSIONER OF INTERNAL REVENUE

vs.

EDWARD T. BLAIR

Petition for Review of Order of the United States Board of Tax Appeals

JUDGMENT—April 11, 1936

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the decisions entered in this cause on March 22, 1935 and March 25, 1935, by the United States Board of Tax Appeals, be, and the same are hereby reversed; and that this cause be, and same is hereby remanded to the said United States Board of Tax Appeals with directions to enter an order in accordance with the views expressed in the opinion of this court.

RECITAL AS TO PETITION FOR REHEARING

And afterwards, to-wit: On the first day of May, 1936, there was filed in the office of the Clerk of this court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

[fols. 139 & 140] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 27, 1936.

It is ordered by the court that the Petition for a Rehearing in this cause be, and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE—May 29, 1936

On motion of counsel for respondent, It Is Now Here Ordered, that the mandate in this cause be, and the same is hereby stayed until the further order of court.

It Is Further Ordered that counsel for respondent file in this court proof of the filing of the petition for a writ of certiorari in the Supreme Court of the United States upon the filing of said petition in said court.

[fol. 141] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 142] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,787. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 247. Edward T. Blair, petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed July 31, 1936. Term No. 247, O. T., 1936.